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CANON LAW ABSTRACTS

A Half-Yearly Review
of Periodical Literature
in Canon Law

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GENERAL AND HISTORICAL SUBJECTS

IER 5/60, 324: T. Cunningham: The Commandments of the Church. (Reply).

Explanation of origins of present list of Commandments of Church. No list of precepts found in Code, and no official sanction of a list for universal Church. In *content*, our present precepts of Church are substantially of very ancient origin, and each is contained in the Code. Why and when our list assumed its present *form* is investigated.

IDE I/60, part 1, 3-114: F. Finocchiaro: Aspetti dell' attività discrezionale della pubblica amministrazione in materia ecclesiastica. (Article).

An examination of liberty of action in the public administration of ecclesiastical affairs with special reference to the fundamental principles governing ecclesiastical affairs in Italian law.

IDE II/60, part 1, 233-258: F. Finocchiaro: Antiche e recenti prospettive di studio del diritto ecclesiastico. (Article).

An historical sketch of the study of ecclesiastical law.

OAK I/60, 36-48: A. Szentirmai: Die Rechtssymbolik im geltenden Kirchenrecht. (Article).

Canon Law contains symbols, *i.e.*, acts and things which by decree of the legislator have juridical effect. Some of these symbols (*e.g.*, Baptism) produce rights; others (*e.g.*, the coronation of a Pope) are merely decorations. Szentirmai examines twenty symbols in the Code.

Per I/60, 67-141: Concilium, Synodus, Codex Juris Canonici: Acta Sanctae Sedis 25th Jan.-31st Dec., 1959.

Collection of pronouncements on the Ecumenical Council, Roman Synod, accommodation of C.J.C. 1) General chronological list; 2) Classification; 3) Texts quoted in chronological order for each of the three subjects.

OAK II/60, 96-112: P. Hofmeister: Die Unterschrift der Analphabeten. (Article).

The Fontes of the Code give little information about the signature of illiterates. But in fact this matter has a long history, particularly in regard to religious profession; either witnesses were required, or the person had to make a mark in the form of a cross.

H. examines six canons in the Code. His conclusions are: ignorance of writing and physical inability to write are equated (the omission of inability in cn 1089 § 2 is an oversight). The Code never requires a mark, but sometimes calls for an extra witness. Some religious Constitutions require a mark at profession.

OAK I/60, 16-36: G. May: Die Infamie bei Benedictus Levita. (Article).

Infames could not be accusers. As part of the process of strengthening the position of Bishops before the civil power, infamia was stressed; it was also laid down that one who suffered infamia in either the civil or ecclesiastical forum was infamis in both.

M. examines B.'s list of the crimes which entail infamia, and his list of the effects of infamia. Finally he deals with the influence of B.L. on subsequent collections down to Gratian.

RDT 2/60, 83-89: P. Hayoit: La doctrine catholique de la tolérance civile. (Article).

6/60, 329-336: id. L'intolérance de l'Eglise catholique. (Article).

Civil tolerance can be defined as the adoption by the State of a legal system which grants all citizens the liberty of having and expressing the philosophical or religious opinion of their choice. Until the 18th century and well into the 19th the Catholic view on civil tolerance was determined by the medieval relation between Church and State: the State ought to be tolerant of error in principle, but could in fact be excused from this duty in order to prevent a greater evil to society. For the last thirty years there has been a growing insight on the Catholic side that civil tolerance must be justified, not from motives of expediency, but from principle; it is not any longer considered a minus malum, but a positive guarantee for the freedom of the act of faith.—An analysis of the so-called "doctrinal intolerance" tends to show that this term proceeds from relativistic views. The right word for anyone who believes that it is the duty of the Church to keep the depositum fidei, is not doctrinal intolerance, but "faithfulness to the entrusted doctrine."—Bibliographical references in both articles.

IDE II/60, part 1, 328-348: C. Cognetti: La riforma degli sponsali e del matrimonio nel pensiero di Scipione de' Ricci. (Article).

An article emphasizing the importance of the reforms concerning engagement and matrimonial impediments proposed by S. De' Ricci to the Synod of Pistoia.

ADC II/60, 328-348: C. Cognetti: La Riforma degli Sponsali e del matrimonio. (Article).

The scene is laid in Tuscany, in the XVIIIth Century. The script is the endeavour of Scipio de' Ricci, Bishop of Pistoia, to reform the Marriage Laws. He wanted to abolish Spiritual Relationship, Public Honesty; to restrict the computation of Consanguinity and Affinity whilst then cancelling all hope of dispensation from these as reformed; and to effect other reforms. In fact the only thing Scipio, Jansenistic as he was, got away with was a reform of Sponsalia. Pope Pius VI backed the scotching of De' Ricci's plans for reforming marriage out of hand.

IDE II/60, part 1, 349-352: A. Bertolazzi: Brevi note intorno alle pronuncie della corte constituzionale in tema di esercizio di culti acattolici. (Article).

Observations on the liberty of non-Catholics to worship now allowed in Italy.

ADC II/60, 259-327: S. Bianconi: L'Assegno dello Stato Sardo ai Valdesi. . . (Article).

A historical summary of the relations of the State in Piedmont with the Waldensian Church and its property. Cromwell's influence is inferred, and so is the later threatened English intervention, after Napoleon. Indirectly it throws light on the State's relation to property belonging to the Catholic Church. In this instance, too, Catholic rights are dealt with in one small passage on account of the exchange of some of the Waldensian property for some monastic property, under the aegis of the State of the time.

IDE II/60, part 1, 234-327: S. Bianconi: L'assegno dello Stato Sardo ai Valdesi e le sue sorti. (Article).

A discussion of the historical background and the development of the annual payment made by the Italian State to the Waldensian Church.

J I/60, 1-12: W. A. Jurgens: The date of the Council of Gangra. (Article).

A discussion of the many opinions on the date of the Council of Gangra. The weight of evidence points to the year 343.

2 **J I/60, 42-54: F. R. McManus: The Law, the Liturgy and participation.** (Article).

On September 3, 1958, the SRC issued an Instruction "On sacred music and the sacred liturgy." This Instruction is an important document of ecclesiastical legislation, binding—like the Code of Canon Law—on all the rites of the Latin Church. Its principal purpose is the encouragement of fuller liturgical participation in public worship by the faithful. Christ governs our common worship through the Church's law. The law of the liturgy intends God's glory and the Church's holiness. It is fulfilled, it attains its purpose only if we are the obedient children of Holy Church.

2 **ME I/60, 151-159: O. De Simone: De Notione ac Officio Liturgici Iuris.** (Article).

3 **IDE I/60, part 1, 115-123: P. G. Caron: Efficacia civile del matrimonio canonico contratto da italiani all' estero ed ivi valido secondo la lex loci.** (Article).

Article on the civil effects granted by the Italian Concordat to a marriage validly celebrated outside Italy by Italian citizens, with a discussion on the judge competent to decide the validity of such a marriage.

3 **AdC 17/60, 257-264: Daniel-Rops: Le Concordat: Sa mise en oeuvre et le réveil spirituel en France.**

An article comprising two extracts from the forthcoming "L'Eglise des Révolutions" by Daniel-Rops, describing the beneficial results of the Napoleonic Concordat for the Church in France.

3 **ADC II/60, 197-232: V. Del Giudice: Norme canoniche, norme concordatarie, norme costituzionali.** (Article).

This is a small treatise on the norms of Canon Law as they are regarded in civil law, in this case Italian civil law. A large part of the article deals with the place of Canon Law in the Concordat. Another of the position since the framing of the Constitution. A particular issue discussed is Nullity and the dispensing of marriage ratum et non consummatum.

3 **IDE II/60, part 1, 197-232: V. del Giudice: Norme canoniche, norme concordatarie, norme costituzionali.** (Article).

A discussion of the value and efficacy of canon law in Italy, under three main headings (1) in preconcordat law, (2) in concordat law, (3) in the Constitution. Valuable in solving some practical questions.

11 **Ap. III-IV/59, 369-400: G. D'Ercole: Invalidità degli atti e Incapacità delle persone nella disciplina delle origini christiane.** (Article).

A detailed and thorough but purely historical examination of the teaching to be found in the ecclesiastical documents of the first three centuries, concerning the canonical effects arising either from the invalidity of a juridical act or from the incapacity of the person performing it.

17 § 1 **HPR 2/60, 435-439: C. Connors: The Fine Line of Authority.** (Article).

The fine line to which C. refers is that between the proclaiming or interpreting of a law and the making of a new one. Priests are sometimes liable to err in this important matter. Practical examples:

The Church condemns societies with an evil end; she condemns bad books. However a priest cannot, on his own authority, declare that a particular society or an individual book comes under the Church's condemnation. Again to change a counsel into a command, or to interpret a law too severely, (as has been done on occasion in the case of cn 1258, for example) is to infringe on the province of the law-giver. On the other hand the use of one's power of dispensing in individual cases to declare the law itself inapplicable to one's community makes one guilty of a similar infringement. Remedy? Acquaint people with the law. They have a duty of making thoughtful application of the law of God and of the Church to their daily activities.

33 **IER 4/60, 255: T. Cunningham: True Time: Its meaning and relevance to the Eucharistic Fast.** (Reply).

The option of using *true* time in calculating the 3-hour period of the Eucharistic fast is theoretically still available but in practice the advantage such use would give is so infinitesimal (circa 20 seconds) that it must be discounted altogether. There is no advantage either in theory or in practice in using any of the other optional times of cn 33, § 1.

56 IDE I/60, part 2, 3: Vicariatus Urbis tribunal appellationis: coram Bedini (14/10/59). Valid Execution of rescript.

The validity of a marriage is impugned because the rescript of a dispensation from the impediment of consanguinity is executed by one who has merely general subdelegation to deal with all matrimonial cases and because there is no conclusive documentary evidence that he did actually execute the rescript. *Non constat* because the Ordinary, who is the normal executor of rescripts of dispensation from matrimonial impediments, may (except when there are explicit indications to the contrary) subdelegate this power without observing any particular formality. Besides, no specific form is required for the *valid* execution of rescripts. So in view of cn 1014 the marriage must be regarded as valid.

86 IER 3/60, 184: T. Cunningham: Dispensation not voided by cessation of faculty to dispense. (Reply).

Loss of power to dispense on the part of the person who granted it does not affect a dispensation he has already granted before losing his power.

LIBER II: DE PERSONIS

99 Correction: Moral personality in canon law (Cf CLA **4, 4**).

In our abstract of Fr. Bertram's article in Per III-IV/59, 349, we said that in universitates bonorum "there is union of intention between founder and beneficiaries who represent him."

This was an oversight by the editor. The beneficiaries do not represent the founder.

The sentence should have read:—"there is union of intention between the founder and those who stand in his place when he is dead, and who still sustain the relationship with the beneficiaries set up by the founder."

101 § 1, 1° RfR III/60, 129-148: J. F. Gallen: Councils in lay institutes. (Article).

Cf. cn **516** below.

105 RfR III/60, 129-148: J. F. Gallen: Councils in lay institutes. (Article).

Cf. cn **516** below.

105 Per I/60, 62-66: W. Bertrams: De mente legislatoris quoad interpretatione cn 105 Codicis Juris Canonici (II). (Article).

When the law enjoins consultation it is necessary for validity. L. Bender's objection (ME III/59, 453) to B's use of Oriental law is groundless. In Per I/59, 65, B. did not intend to solve a doubt of law by reference to cn 35 of Oriental law: no objective doubt arises from text and context of cn 105 C.J.C., and cn 35 of Oriental law clearly indicates the mens legislatoris. They therefore differ only in their interpretation of cn 105 C.J.C. according to text and context. (Cf. CLA 3, 3 and 4, 2).

105 1° AdC 17/60, 267-70: A. Bride: A propos d'érection de paroisses nouvelles. (Reply).

In discussing cn 454 § 3 (q.v.), B. comments on "audito capitulo," and whether this is necessary for the validity of the Bishop's act. This depends on the controverted interpretation of cn 105: "satis est ad valide agendum ut Superior illas personas audiat." He gives some practical conclusions without entering fully into the controversy, and favours the validity of the Superior's acts despite lack of consultation. He suggests an argument from cns 25 and 27 § 1, based on custom (it is now over 40 years since the promulgation of the Code,

and Superiors have been constantly neglecting consultation over the years), and doubts that one can make use of the text of the Oriental Code as a source of authentic interpretation of an obscure and doubtful canon of the Latin Code (contra Bertrams in Periodica, cf. CLA 3, 3 and 4, 2).

135 **AER 2/60, 128: J. P. McCormick: Divine Office in the Vernacular.** (Reply).

The required substantial form of the Office is violated if it is recited in the vernacular and hence the obligation is not fulfilled.

135 **VR I/60, 45: G. M. de Antoñana: Principio y Fin del Oficio Parvo.** (Reply).

The more general and better founded practice is to apply the 1955 decree on the simplification of the rubics to the Little Office.

138 **PM 2/60, 88-89: A. Gennaro: Casus de contractibus aleatoriis.** (Reply).

Pancratius, a religious of simple vows, wins a large sum in Totocalcio (a football-forecast pool or competition). He uses some of the money which his superior gave him to defray any necessary or fortuitous expenses of a hike as entrance money (1/-). G. replies that the religious did not act contrary to cn 138. The money was gained "industria sua" and so goes to the religion. Also the superior only gave the use of the money to the religious—keeping the dominion or ownership—et res fructificat domino.

143 **J II/60, 179-193: A. Szentirmai: The canonical status of a cleric living outside his own diocese.** (Article).

The Code of Canon Law does not regulate the canonical status of a cleric now living permanently outside his native diocese. Faced with this lacuna in the law, S. applies the rules of cn 20. He examines firstly how and under what conditions a cleric may settle outside his own diocese; secondly, he shows there is no indication that the local Ordinary should possess the same power over the priest of an alien diocese as the priest's proper Ordinary; and finally, he analyses the particular matters in which the priest living outside his own diocese continues to be subordinated to his own bishop and in what ways he will be subordinated to the local Ordinary.

160ff RfR I/60, 54: J. F. Gallen: Teller or secretary of general chapter elected superior general. (Reply).

The newly elected superior general assumes the presidency of the chapter and another religious is to be elected teller or secretary.

165 CpR I-II/60, 72-75: S. Goyeneche: Admission of Ecclesiastical Superiors to vote in a Religious Chapter. (Reply).

Cf. cn **507** § **1** below.

196 NRT 5/60, 470-482: D. Nothomb: La nature du pouvoir de juridiction du confesseur. (Article).

Cf. cn **872** below.

209 AfER II/60, 108: E. de Bekker: Supplied jurisdiction in common error. (Casus).

Preparations have been completed for the marriage of John and Mary. On the wedding day the PP is called away on a sick call. The couple had asked a friend, Fr. X, to do the wedding, without informing the PP. He arrives in the PP's absence and officiates, forgetting that he lacks jurisdiction. De B. says the marriage is valid in virtue of cn 209, since the circumstances of the case (X's action and the opinion of the parishioners) must induce almost the whole community into error.

209 ME II/60, 291-306: L. Bender, O.P.: Error Communis et Potestas Delegata ad Actum. (Article).

Does the Church supply jurisdiction in virtue of cn 209 when it is a question of one priest delegated for a single marriage, but invalidly delegated? Bender accuses Frs. Reed and Barry, S.J.* of asserting this, while he holds the true doctrine that in cases like this the Church certainly does not supply jurisdiction. Barry and Reed hold that in addition to common error there must in fact be a grave danger of harm to the faithful. How can this be, says Bender, when only the parties to the marriage are involved? Bender holds there must be common error in fact, because so the words of the canon indicate, because the ancient tradition of the Church has not been changed by the Code, and because, if the interpretation of the PCIC given in the year 1952 were understood in this sense, the laws of the Code contained in canons 1094-1096 would have to be considered as abrogated. *(Cf. CLA **4**, **6**).

209 CM 4/60, 135-139: J. Génicot: Common Error (Casus).

Delegation given to a priest to perform one particular marriage was certainly invalid. The ceremony was performed. Can we say that the marriage was valid on account of common error?

G. quotes the familiar arguments in favour of validity—error communis de jure, and the common good. He then develops the opposite view giving a paraphrase of two articles in Per, 1959 (CLA 4, 6) which support the negative answer. The constant jurisprudence of the Rota favours the negative view. If cn 209 could be invoked virtually all marriages celebrated in facie ecclesiae would be valid and cns 1094-96 would be meaningless. The canonical meaning of common error—the reason why the Church supplies jurisdiction in common error—is the danger that many faithful might suffer harm on account of the want of jurisdiction. Such danger cannot exist in our case. G. concludes that from the answer of PCIC 26/3/1952, it cannot be deduced that the Church supplies jurisdiction in every case of invalid delegation for a particular marriage. Such cases must be solved in the same manner as before that answer. "Minime mutanda sunt quae semper certam habuerunt interpretationem."

209 J I/60, 55-62: C. V. Bastnagel: Undelegated assistance at marriage. (Article).

Cf. cn. **1095**, below.

209 L I/60, 3: Fr. Hermes, OFM, Cap.: De extraordinario Confirmationis ministro in hodierna Ecclesiae disciplina. (Article).

The foundation of the power of confirming is the sacramental character of Order which is essentially indivisible and admits of no incompleteness. The power to confirm is in the simple priest, but valid use is restricted by the jurisdictional power of the Church. Similar restriction prevents Bishops from delegating. The early history of Confirmations administered by Oriental priests has no evidence that the intervention of the Roman Pontiff was required for validity. H. argues for the application of cn. 209, though the question must be treated "magna cum prudentia." In the faculty granted to missionaries (S.C.P.F. 18/12/47) it would seem from the dispositive part of the Decree that Confirmation is validly given by missionaries in danger of death arising from **any** cause, not necessarily "ex gravi morbo." Oriental usage past and present is reviewed and compared with Western practice.

216 HPR 4/60, 671-673: C. L. Parres: Reverting to National Parish. (Reply).

It is doubtful if a member of a national group, who has affiliated himself with an American territorial parish, has the right to revert to the national parish of which he was once a member. Beste thinks he may not. P. can see no reason why a descendant of a national parishioner, who has himself always been a member of a territorial parish, should have the right to join the national parish of his ancestors.

216 § 1 AdC 17/60, 267-70: A. Bride: A propos d'érection de paroisses nouvelles. (Reply).

Two questions are asked about the erection of new parishes: first, is a special church necessary? Cn 216 prescribes four elements necessary to constitute a parish, in normal circumstances—one of which is "peculiaris ecclesia." However, for practical reasons the church need not necessarily be the **property** of the parish, provided it has free disposition and exclusive use of the church (apart from exceptional cases when use of the church is shared temporarily with another parish). Nor need it be a **church** in the full sense of the term, but a place of worship put at the stable disposition of the faithful (and this place may be a private oratory, or rented premises). Secondly, are new parishes "inamovibles?" Cf cn **454** § **3**, below.

216 § 4 P 2/60, 202-204: P. R. Coyle: Membership of National Parishes. (Reply).

According to a private reply of S.C.C. to the Apostolic Delegate in U.S.A. (1938), foreign immigrants and their children (when emancipated) may, when they know English, affiliate with the territorial parish in which they have their domicile. They are free to choose, but only between their own national parish and the territorial one.

223 AdC 16/60, 251-252: A. Michel: Que faut-il pour qu'un Concile soit oecuménique? (Reply).

An account, with historical notes, of what is required in order that a Council be truly Ecumenical.

248 ME II/60, 220-270: S. C. Consist. Decretum "De Facultatibus et Gratiis Pro America Latina et pro Insulis Philippinis" with annotations by J. Ferreto.

250 ME I/60, 49-56: F. Romita.

Romita gives a long comprehensive commentary on the decree of the SCC. giving the rules concerning the 1959 Studium of this Congregation. The date of the decree was 26th September. Romita deals with the history and development of the Studium and with the value of the diploma issued by it.

305 CpR I—II/60, 26-30: I. Ting Pong Lee: Annotations on Litt. Encyc. . . " Princeps Pastorum " 28/11/59 of John XXIII with statistics of native hierarchy and clergy on the Missions.

329ff J I/60, 13-29: J. A. O'Donohoe: Administrative aids to the bishop. (Article).

O'D. deals with some of those aids which are sometimes overlooked when the diocesan curia is being constituted. These are: the Diocesan Seminary Board; the Board of Censors for Publications; the Council of Administration; the Council of Vigilance; the Music Commission; the Commission on Sacred Art; the Liturgical Commission. The Church has directed us to establish these agencies in our dioceses. Their presence there can have only one result: effective and efficient administration.

343 RDC I/60, 3-26: G. Baccrabère: Exercice du droit de Visite. (Article).

A continuation of an earlier article on the history of Canonical Visitation of country parishes in the Toulouse diocese shortly before the Council of Trent.

348 § 1 AdC 11/60, 170-1: A. Bride: Evêques titulaires et censure des livres. (Reply).

Cf. cn **1385 § 2**, below.

356 ME I/60, 7-47:

Annotations by **Spiazzi, O.P.** on the Holy Father's letter announcing the convention of the Roman Synod. He gives also the two allocutions of John XXIII on the sanctity, learning, celibacy and chastity in the life of a priest in modern times.

357 § 2 EL II/60: 121-128: A. Bugnini: "Ordo ad Synodum." (Article).

B. compares the ceremonies for a Synod in the Roman Pontifical with those used in the recent Roman Synod, and shows how traditional rites were maintained with variations, additions and omissions whereby the rite was adapted to modern circumstances.

363ff J I/60, 63-68: J. I. Johnson: A practical approach to a diocesan synod. (Article).

J. outlines the groundwork laid before the announcement of the Second Synod of Springfield, U.S.A., describes the immediate preparation for the Synod and summarizes the ceremony itself.

375ff Per II/60, 204-236: H. Hoffmann: De codificatione juris archivistici per jus novissimum Codicis Juris Canonici. (Article).

Code legislation is brief but adequate. It is flexible, allowing for varying practice according to circumstances and leaving scope for the development of new systems. Properly applied it achieves the threefold purpose of archival law: efficient collection, safe preservation, and due accessibility of documents. It is thus in full harmony with the most recently advocated principles.

451 § 3 IDE I/60, part 1, 123-137: N. Croso: Figura giuridico-ecclesiastica del cappellano militare delle forze armate italiane. (Article).

The chaplain in the Italian Armed Forces is not really a P.P., but has, in regard to those souls entrusted to him, the same competence as a P.P. with all the corresponding rights and obligations. Neither is he strictly speaking an officer but he has the same rights and obligations as an officer.

451 § 3 HPR 6/60, 848-849: C. L. Parres: Civilian Subject of Military Ordinate for Marriage. (Reply).

Military chaplains have a personal pastoral jurisdiction of a special type over subjects in their Military Ordinate. This jurisdiction is cumulative with that of the local Ordinary and territorial pastor. Hence persons subject to the Military Ordinate can have two proper pastors, who can validly and lawfully assist at their marriages.

454 P 1/60, 44-48: P. R. Coyle: Status of Parishes in U.S.A. (Reply).

Every parish erected since the promulgation of the Code is irremovable, unless the bishop has explicitly established it as removable. Others retain pre-Code status unless the bishop has changed them to irremovable, or an Apostolic Indult has changed them to removable. This latter the bishop cannot do. There are many pre-Code irremovable parishes in U.S.A. The Plenary Council of Baltimore in 1884 decreed that a certain number in every ten be constituted irremovable.

454 § 3 AdC 17/60, 267-70: A. Bride: A propos d'érection de paroisses nouvelles. (Reply).

The second part of the reply (cf. also under cn 216 § 1) deals with the question as to whether new parishes are "inamovibiles" or not. Cn 454 § 3 says "sint inamovibiles, nisi Episcopus, etc.": the general preference of the Code is therefore for inamovibilitas, but it is left to the Ordinary to decide otherwise if he thinks it more expedient. Reasons for amovibilitas are discussed; but the Bishop's decision should be determined by the good of souls, not by his own personal convenience. A formal decree of erection making the parish amovibilis is not necessary, but there must be at least an oral declaration by the Bishop that this is his intention (this declaration could be either particular to each new church, or general, as expressing the Bishop's policy with all new churches); otherwise, if no declaration whatsoever is made, the parish will be ipso iure inamovibilis. Cn 454 § 3 requires also that before he decrees a new parish to be amovibilis the Bishop should consult his Chapter: "audito capitulo." Bride discusses at some length the controversy surrounding cn 105, and concludes that if the Chapter is not consulted the Bishop's act is still valid. Cf. cn **105** above.

455 J II/60, 194-206: P. Rayanna: Appointment of Parish Priests. (Article).

The doctrine of the Code on the appointment of P.P.s is scattered in several places. In this article R. pieces that doctrine together and explains in order the various steps or acts that go to form the appointment of a P.P.

467-468 CR 2/60, 109-12: L. L. McReavy: Care of the Dying after the Last Sacraments. (Reply).

A dying person who lingers for days or weeks after receiving the Last Rites may "legitimately request" further administrations of Viaticum and absolution, and the obligation to supply the latter may be grave. The faithful should be instructed to call the priest for the *Ordo commendationis animae* when death is imminent, but he can easily be excused from this non-grave obligation.

467 § 2 HPR 6/60, 845: C. L. Parres: Obligation to Attend Own Parish Church. (Reply).

There is no law which obliges parishioners to attend their own parish church, though the Code in cn. 467 § 2 counsels them to do so. The same is true of Paschal Communion, (cn. 859 § 3).

471ff L II/60, 245: Fr. Renatus, OFM.Cap.: De peculiari figura juridica vicarii paroecialis. (Article).

R. examines the case of a parochial vicar who has no place in the Code—the priest in charge of a parish pleno jure united to the mensa episcopalis. Where a parish is so united to a non-collegiate moral person there can be no parochus habitualis, and the government of the parish will be the responsibility of the Bishop according to cn 1420 § 3. The priest in charge of the parish is a vice-gerent of the Bishop. He is not a vicar according to any of the cns 471-476. Juridical obligations therefore of parochus (*e.g.*, "Missa pro populo") are binding on the Bishop.

472 CME 4/60, 372-374: C. Eyckens: De vicario oeconomo. (Article).

In this short article a survey is given of the dispositions of the C.J.C. concerning the vicarius oeconomus. Moreover the particular legislation is considered: in the diocese of Malines the v.o. is appointed by the Dean, without the intervention of the diocesan authority; an exception is made for the case when the resigning pastor has been granted leave to stay in his parish. In Belgium the v.o. receives half of the pastor's salary, which is officially fixed by the State; it can be cumulated with the allowance for the curate, which is also officially fixed.

487 Per I/60, 3-61: F. Hürth: Pii XII Allocutio d.d. 9 Decembris 1957.

A commentary on the address to the Second World Congress of the States of Religious Perfection. Additional observations: 1) The Allocutio was neither revoked nor modified by the Allocutio of 11 Feb. 1958 ad Moderatores Generales Ordinum et Sodalitatum: cn 22 is analogically applied; Pius XII privately asserted his intention that both should retain their force; 2) In his Allocutions, Broadcasts, Encyclicals, etc., Pius XII exercised the Supreme Magisterium. This he privately affirmed.

489 CpR I—II/60, 36-39: B. Thyssen: Annotations on Apostolic Brief approving new Passionist Constitutions.

Th. notes a greater degree of centralisation in the matter of government, tempered by an extension of voting power in elections.

495ff RfR II/60, 109-119: III/60, 175-181: J. F. Gallen: Local houses and superiors. (Replies).

A series of 23 questions and answers on local houses and local superiors arranged in logical order and dealing principally with the following: canonical erection of houses, domus formatae et non-formatae, filial houses, separated establishments, the right to a church or public oratory. (To be continued).

499 ME I/60, 97-104: Decree of the S.C. Relig. giving norms for aggregation to the Pontifical Institute "Regina Mundi."

A commentary is given by **A. Gutierrez, C.M.F.**

502 VR I/60, 46-47: A. Peinador: Permisos o Licencias. (Reply).

Absolutely speaking, a higher superior can authorize a subject to act without the permission of the local superior, but only if the higher superior is one upon whom the local superior is hierarchically dependent.

504 RfR I/60, 49-51: J. F. Gallen: Canonical requisites for a higher superior. (Reply).

A full explanation of the three requisites—profession, age, and legitimacy.

507 § 1 CpR I—II/60, 72-75: S. Goyeneche: Admission of Ecclesiastical Superiors to vote in Religious Chapter. (Reply).

Though the Constitutions state that Ecclesiastical Superiors of Missions accredited to a Religious Congregation have a deliberative vote in the Chapter, this norm applies only to Superiors who are members of the Congregation. If Superiors are non-religious the Mission is not fully accredited to the religion, and admission of non-religious to vote in affairs of the religion is contrary to whole sense of the Code.

512 CM 1/60, 30-32: F. Timmermans: Visitation of Convents. (Reply).

T. discusses the object and the mode of visitation of convents of pontifical and diocesan congregations.

516 RfR III/60, 129-148: J. F. Gallen: Councils in lay institutes. (Article).

This article is an effort to explain simultaneously the principles that govern all councils in lay institutes—the general council, and provincial and local councils. G. deals at some length with the application of cn 101 § 1, 1° and cn 105.

520-521 ITQ III/60, 201-220: E. M'Caffrey: Confessors of nuns and sisters. (Article).

A commentary on cn 520-521, to be continued. Cf. cns 876, 2414, below.

532 § 2 RfR I/60, 51: J. F. Gallen: Sale of property forced by a government. (Reply).

Expropriation is not considered canonically as alienation, but as extraordinary administration.

534 § 1 RfR I/60, 52: J. F. Gallen: Borrowing of money within same institute. (Reply).

It is solidly probable that canonical norms for alienation and contracting of debts do not apply to transactions between distinct moral persons of the same institute.

549 VR II/60, 108: G. Escudero: Herencia después de la Profesión. (Reply).

Cf. cn **583, 1°** below.

556 § 1 AdC 8/60, 122-124: A. Bride: Interruption du Noviciat pour cause de longue maladie. (Reply).

Having completed her postulancy and, on reception, one month of noviciate in a Congregation of diocesan law, a girl becomes seriously ill. Between hospitalization and convalescence (in a house of the same Congregation), seven years elapse before she is able to recommence her religious training. Q. Must she repeat her postulancy? R. Only if, in the interval, her link with the Institute has been formally severed by a **positive** act either of her own will or of her Superiors. In which case, if the Congregation be one of perpetual vows, only the H. See can dispense or reduce the duration of the new postulancy to less than six months; if of temporary vows, the local Ordinary may dispense (cf. cn 539 § 1). All this, however, affects only the liceity of admission to the noviciate.

Q. If the postulancy need not be repeated, who would be competent to reduce her noviciate (which must be begun again) from the two years prescribed by the Constitutions to the one essential canonical year? The Constitutions do give the Superioress-General certain powers of dispensing in their provisions. R. Unless the faculty to reduce the noviciate has been **expressly** granted by the Constitutions to the Superioress-General—and this would be very rare—the local Ordinary would be the competent authority; and he should exercise his power only with discretion and reserve.

559 § 1 VR II/60, 105: A. Peinador: Validez del Noviciado y de la Subsiguiente Profesión. (Reply).

Validity of noviciate and subsequent profession are not affected by the absence of the Master for the whole year, above all when there is a substitute acting for him.

563 RfR I/60, 52-54: J. F. Gallen: Reports of novice master to higher superiors. (Reply).

No obligation can be derived from Canon Law to make two reports during a two year noviciate, but **in practice** it would be unthinkable to make no report during the second year.

579 CpR I-II/60, 57-68: A. Card. Larraona: Commentarium Codicis.

Mainly a summary of the well known doctrine on the distinction between simple and solemn vows. All religious vows render contrary internal and external acts sinful. The simple vows do not render contrary acts invalid unless expressly

stated. L. gives examples of such contrary provisions in regard to vows of poverty and chastity from general and particular law. Difficulty with regard to vow of obedience. L. holds that there is power of rescinding acts contrary to the vow of obedience but not where such "irritatio" would affect the nature of the simple vow of poverty.

581 VR I/60, 47-48: A. Peinador: Votos Solemnes y Renuncia de los Proprios Bienes. (Reply).

It is unlawful for religious authorities to prevent a religious from renouncing her property before solemn profession, nor can they now force the religious by obedience (though she is free to do so) to make effective in civil law the title of the community to the property, especially since it is still possible to obtain from the Holy See the indult now needed for her to exercise her right of renunciation.

581 § 1 J II/60, 127-158: R. W. O'Brien: The renunciation of possessions before solemn profession. (Article).

At times the renunciation of goods prescribed by cn. 581 is associated with the establishment of a trust, recognized by civil law, in which it is stipulated that the assets of a religious are destined for a particular end, but revocation of the trust is automatic if the subject does not persevere in the institute. O'B. holds that this arrangement appears incompatible with the solemn vow of poverty and the canonical notion of an abdication of ownership. The present law gives no indication that a conditional renunciation of goods is acceptable in any form. The only way to cope with exceptional cases is to refer them to the S.C. Religious.

582 RfR I/60, 51-52: J. F. Gallen: Insurance award for bodily injuries to a religious. (Reply).

If a religious is in vows (even simple) at the time of an accident, the insurance award for personal injuries belongs to the institute.—S.C.Rel. reply 16/3/1922.

583, 1° VR II/60, 108: G. Escudero: Herencia después de la Profesión. (Reply).

It is not contrary to this cn for a religious to use an inheritance received after profession in order to constitute or increase her dowry. Once this has been done, however, the goods become subject to the law on dowry and superiors cannot authorize the spending of any part.

592 PM 2/60, 88-89: A. Gennaro: Casus de contractibus aleatoriis. (Reply).

Cf. cn **138** above.

593 CpR I-II/60, 78-100: A. Peinador: De Propria Constitutionum Religiosorum Obligatione. (Article).

P. submits to critical examination the assertion that Constitutions do not oblige under sin, but only "ad poenam" or "sub imperfectione positiva." He concludes that the first part of the statement is only partly true, *i.e.* Constitutions viewed as norms proposed by the Church, do not bind under sin because the Church has so decided, but they bind under sin from the will of the individual professing perfection in a juridical state of life. The rest of the statement is simply false.

596 Ap. III-IV/59, 360-368: D. M. Huot: Summus Pontifex Pius XII et accommodata renovatio in statibus perfectionis. (Article).

A commentary on Pope Pius XII's teaching on the accommodating of religious institutes to modern conditions, with particular reference to the Holy See's rulings and practice concerning the modification of religious dress—a subject, H. says, on which "multi locuti sunt, magno saepe cum impetu maxima saepius cum incompetentia!"

604 § 1 VR II/60, 107: A. Peinador: Violación de la Clausura. (Reply).

While not sanctioned by any penalty in the Code, the obligation of Episcopal enclosure is of its nature grave, though its violation admits parvity of matter.

646 § 1, 2° CpR I-II/60, 75-77: S. Goyeneche: Crime committed by exclaustrated religious. (Reply).

Cn 646 § 1, 2° cannot be verified where crime is committed by an exclaustrated religious priest, appointed administrator of a parish by a benevolent bishop. There is no "fuga e domo religiosa" and, as the religious is already outside the religious house, no application of cn 668. It is rather the duty of the local Ordinary to punish the delinquent unless he is recalled to the religious house or sent back by the bishop.

646 § 1, 2° CpR I-II/60, 69-72: S. Goyeneche: Dismissal from Religion. (Reply).

"Fuga" is to be understood in the moral sense of the term. The crime is therefore verified in the case of a religious priest, who, having been transferred to another house because of his relationship with a woman, subsequently leaves the house without the Superior's knowledge, meets the woman in her place of residence and goes away to commit sin with her, then returns to the religious house. The excommunication of cn 2385 is not incurred as there is no apostasy. After dismissal there is no obligation on Superiors to secure amendment, but charity suggests informing S.C. Relig. and the local Ordinary of the whereabouts of the delinquent in view of cn 670.

707 § 1 AdC 4/60, 61-2: A. Bride: Un groupement de religieuses sécularisées peut-il être érigé en "pieuse union?" (Reply).

There is no reason why secularised religious should not be aggregated to an already existing "associatio fidelium," or should be formed into a new one of their own, which would naturally come under the heading of "pia unio" (cn 707). Formal erection is not necessary (cn 708), the Ordinary's approbation suffices to give them canonical status. The Ordinary may of course erect them into a "persona moralis collegialis"; prudence is called for in deciding whether the community have sufficient stability and prospects for such a move (cf. cn 100ff). The new association may wear a habit, though it is not necessary—again it is a matter for the prudent decision of the Ordinary, taking into account the Holy See's wishes for simplified dress, the danger of alienating "vocations," etc.

LIBER III, PARS. I: DE SACRAMENTIS: TIT. I: DE BAPTISMO

731 § 2 CR 3/60, 176-8: L. L. McReavy: Prevention of Sacrilege. (Reply).

A known non-Catholic woman who received Holy Communion in a convent chapel and was seen to profane the sacred species should at least have been prevented by prompt and effective action from repeating the sacrilege when she later returned to the same chapel and again went to the communion rail. Fear of causing a stir was not an excuse for inaction.

733 AC 1960, 121-131: A. Frühauff: Le directoire pour les actes administratifs des sacrements. (Article).

F. discusses this practical handbook issued by the French Hierarchy in 1956. It is neither a ritual nor a collection of diocesan statutes, but after the normae generales it gives numerous concrete applications of how to write and what to do in a large variety of cases. But the French Hierarchy is not a Plenary Council, has no authority and cannot impose uniform practice. That must be left to individual Ordinaries. However the Holy See seems to be recognising more and more the unity of the Church in France and the representative character of the Meeting. Some dioceses have neglected the Directoire altogether.

737 § 1 AER 6/60, 422-423: F. J. Connell: Sodium Chloride Injection for Baptism. (Reply).

If plain water is available, it is certainly unlawful to use a sodium chloride injection (normal saline) though it be 99 per cent water and 1 per cent common salt. Further, considering the aestimatio vulgaris, validity of baptism conferred with this seems doubtful. It could be used in emergency, with subsequent conditional repetition if opportunity offered.

750-751 HPR 1/60, 346-351: M. D. Forrest: Remissness Regarding Baptism. (Article).

F. calls attention to certain Church rules on Baptism that are sometimes overlooked, misinterpreted or forgotten. The following points are stressed:

1. Cn 750 does not demand moral certainty of Catholic upbringing, merely solid probability.

2. Cn 750 and cn 751 make no mention of cases where parents are indifferent Catholics or where one only is a Catholic.

3. In practice in almost every case, converts must be baptised (at least conditionally).

4. A reply of the S.C.S.O. (AAS, Dec. 22, 1949) which may seem contrary to the above rule refers to non-Catholic baptism only in relation to non-Catholic marriages.

759 § 3 P 6/60, 563-6: P. R. Coyle: Supplying the Ceremonies of Baptism. (Reply).

A commentary on the cn. The ceremonies should be supplied (1) as soon as possible—this obligation continues to exist until fulfilled. The ordinary can dispense an adult for a grave cause and in certain cases. (2) In their own parish, even if private Baptism is conferred in other parish.

764-5 CR 6/60, 357-8: L. L. McReavy: Godparents for Social Purposes. (Reply).

In a baptism at which the parents presented five godparents, including one socially desirable non-Catholic, it was sufficient for the priest to ensure that one of them (at most *unus et una*) could validly and lawfully fulfil the function and undertake the spiritual obligation. No others should be entered in the register. The practice of nominating extra godparents for purely temporal reasons is to be deprecated, because it belies the name, but it does not appear to be intrinsically wrong.

765, 5° HPR 4/60, 670-671: C. L. Parres: Proxy Problems. (Reply).

It is not necessary for validity or for liceity that a proxy at baptism be of the same sex as the sponsor.

A non-Catholic could act as proxy validly but not lawfully, since the proxy takes an active part in a Catholic rite.

769 HPR 1/60, 380: C. L. Parres: Convert Godparent's Obligation to Godchild. (Reply).

For valid sponsorship the sponsor must not belong to a heretical or schismatical sect. Therefore a convert who, as a non-Catholic, was sponsor at a non-Catholic baptism would not contract the obligations mentioned in cn. 769 towards his godchild.

LIBER III, PARS I: DE SACRAMENTIS: TIT. II: DE CONFIRMATIONE

781 § 2 AfER I/60, 23: A. Goor: Imposition of hands and anointing. (Casus).

The imposition of hands on the head at the very moment of the anointing is necessary for validity. The most suitable form of imposition (probably necessary for liceity) is by placing the outstretched fingers of the right hand on the head whilst anointing with the thumb. One could validly anoint with any other finger. Anointing on the forehead is probably necessary for validity.

782 Per II/60, 143-190: U. Navarrete: De ministris extraordinariis Confirmationis in America Latina et Insulis Philippinis. (Article).

Having outlined the pre-Code position, N. explains the application of six sources of deputation: The Code; Faculties of Apostolic Delegates; Faculties of Ordinaries subject to S.C. de P. Fide; Faculties of all local Ordinaries; Decree "Spiritus Sancti munera," 14th Sept. 1946; Decree "Post latum," 17th Dec. 1947. Writing chiefly for the clergy of Latin America and the Philippines, N. emphasises the difficulty of knowing when deputation is in place, and suggests a complete restatement of the law for the Latin Church with the suppression of all indults.

782, § 2 CR 4/60, 228-9: L. L. McReavy: Confirmation by Curate Hospital Chaplain. (Reply).

A curate who has been given actual charge of a maternity hospital by his PP, the official chaplain for civic and canonical purposes, cannot confirm dying children there under the English indult, until he has been stably appointed by the Ordinary as principal chaplain for canonical purposes. Once so appointed, both he and the PP can liberally interpret the clause which requires the PP to be summoned when "not legitimately impeded."

782 § 2 L I/60, 3: Fr. Hermes, OFM, Cap.: De extraordinario Confirmationis ministro in hodierna Ecclesiae disciplina. (Article).

The foundation of the power of confirming is the sacramental character of Order which is essentially indivisible and admits of no incompleteness. The power to confirm is in the

simple priest, but valid use is restricted by the jurisdictional power of the Church. Similar restriction prevents Bishops from delegating. The early history of Confirmations administered by Oriental priests has no evidence that the intervention of the Roman Pontiff was required for validity. H. argues for the application of cn. 209, though the question must be treated "magna cum prudentia." In the faculty granted to missionaries (S.C.P.F. 18/12/47) it would seem from the dispositive part of the Decree that Confirmation is validly given by missionaries in danger of death arising from **any** cause, not necessarily "ex gravi morbo." Oriental usage past and present is reviewed and compared with Western practice.

785 § 1 AER 3/60, 204-205: F. J. Connell: Confirmation of a Retarded Child. (Reply).

Cf. cn **788** below.

788 AfER I/60, 43: A. Hastings. Age for Confirmation. (Article).

The normal age for receiving Confirmation is seven, or even earlier, according to the law of the Church. The practice today is to receive it about the age of twelve. Traditionally it should be received before first Holy Communion, and therefore it should not be delayed later than about seven. In favour of his view H. cites canon law, papal example, tradition and especially the whole nature and meaning of the sacrament.

788 AER 3/60, 204-205: F. J. Connell: Confirmation of a Retarded Child. (Reply).

A child so mentally retarded that it can never reach the use of reason is not to be deprived of Confirmation, nor is there any reason for deferring the Sacrament in its case to the usual age. However, a bishop, especially in a large diocese, would not be obliged to go to the homes of retarded children to administer the Sacrament, since this would require too much time.

LIBER III, PARS. I: DE SACRAMENTIS: TIT. III: DE SSMA. EUCHARISTIA.

806 AfER I/60, 11: J. de Reeper: Bination. (Article).

De R. gives the history and present law on bination. The faculty to binate needs a special apostolic indult or faculty from the Ordinary. It is territorial, and a visitor is not obliged to say a public Mass to avoid the necessity of a local priest binating. Notabilis pars of *Sacram Communionem* is the same as in cn 806, 20-30 persons. A priest may say a binated evening Mass only if he has permission (a) to binate and (b) to say one of his Masses in the evening. So, unless the bishop has a special indult, such a Mass may be said only die festo de praecepto, and there must be a notabilis pars at both Masses. When the ablutions have been involuntarily taken, the concessions of *Christus Dominus* may be used even though the priest is binating or trinating devotionis causa (*e.g.*, on 2nd November and Christmas Day). A stipend may not, in law, be accepted for one binated mass if the other is ex justitia. But the Holy See readily allows Ordinaries to permit such a practice if the entire stipend for the binated Mass is given to the bishop. This condition does not apply in the case of the special concession which Mission Ordinaries can grant.

806 ACR I/60, 30-32: J. Madden: Bination for evening Mass. Powers of Ordinary. (Reply).

When we speak of permission for evening Mass, the Ordinary is the bishop alone; when there is a question of bination on week-days, the Ordinary is either the bishop or the V.G.

Should a bishop grant habitual faculties to his priests to binate on week-days, the second Mass may be said in the evening, only if the bishop has authorised an evening Mass. The bishop cannot give the faculty to say one Mass in the morning and the other in the evening sic et simpliciter. He can delegate his authority to allow an evening Mass, and if he has the indult, give the same priest the faculty to binate on week-days. The priest here has a two-fold faculty, and he may use both in one act, *viz.*, evening Mass.

806, § 2 CR 1/60, 44-5: L. L. McReavy: Number Required for Binated Mass. (Reply).

A binating priest need not send the congregation away without Mass when they happen to be less than 20 in number. But if this happens habitually, the Ordinary's judgement should be sought.

806 § 2 AfER I/60, 23: A. Goor: Binated evening nuptial Mass. (Casus).

All three priests in the parish have said Mass in the morning. Even granted that the Ordinary has given faculties for bination and evening Mass in the parish, and that the morning Masses were all for the spiritual needs of the faithful, G. holds that an evening nuptial Mass entailing bination is not justified because ut sic it is not ad bonum spirituale fidelium.

806 § 2 AER 6/60, 422: F. J. Connell: Is Bination Permitted? (Reply).

In a parish church with four priests and eight Sunday Masses, each may binate. There is no obligation to resort to the extraordinary measure of having four religious priests supply from nearby monastery.

806 ST 1/60, 41-44: E. F. Regatillo: Bination on week-days. (Replies).

1° A (South) American bishop has permission to allow bination on week-days in order to facilitate evening Masses. He gives permission to all PPs to binate three times weekly. May each priest in a parish receive permission to binate so that there is daily evening Mass? R. In fact the bishop has only given permission for three evening Masses. But there is no reason why he should not be asked for more.

2° The bishop has given permission for bination on week-days, so that religious and school-girls may hear Mass in their own oratory, which is quite near the parish church. R. holds that since the indult was given to ensure daily Mass in the school, bination is allowed even though it would be quite a simple thing for the nuns and girls to come to the parish Mass; that the priests concerned would not be justified in binating in another church, so making it necessary for them to attend the parish Mass; that one priest may binate in the parish church while the other says the school Mass; and that one may binate in parish and school while the other says a Mass elsewhere.

813 § 1 TS II/60, 256-270: J. J. Reed: The Mass Server and Canon 29. (Article).

Discussion on problem of priest who either must omit Mass or say it without a server was not terminated by SCS Instruction of 1/10/1949. Support still could be found for the view that devotion alone was sufficient reason for the priest saying

Mass without a server. R. denies sufficiency of this cause since hardship of being unable to satisfy one's devotion, because Mass not said, is per se intrinsic to the observance of the law and is not the extrinsic, accidental burden which gives rise to excusation. Also, devotional loss is too subjective and intangible an element to form safe basis for excusation. But R. would legally justify priest saying Mass because such seems to be established practice of most priests and this forms a customary interpretation of the law—"consuetudo juxta legem" (cn. 29). The 1949 document does not "ex professo" outlaw the practice as an abuse contrary to the law.

813 § 1 AER 2/60, 126-128: J. P. McCormick: Absence of a Server at Mass. (Reply).

The instruction of the S.C.S., 1/10/1949, is the latest official pronouncement on this problem. It seems definitely to outlaw the lenient view that Mass may be said without a server merely for devotion's sake or even for the sake of making it possible for people to receive Communion.

813 § 1 AdC 1/60, 15-16: M. Huftier: Messe sans Servant? (Reply).

Since Instr. of S.C.S., 1st Oct. 1949, the law is that Indults to say Mass without a server must be subject to the restriction (inserted in the rescript) "dummodo aliquis fidelis Sacro assistat."

813 § 1 AdC 1/60, 15: M. Huftier: Messe sans Servant? (Reply).

Instr. "De musica sacra" of S.R.C., 3rd Sept. 1958, in forbidding the "synchronization" of Masses (n. 39), does not imply that one person may not serve a number of Masses which are being celebrated simultaneously.

814 J II/60, 207-217: B. Loftus: Water in the Wine. (Article).

In the light of ecclesiastical documents on the matter L. shows that the precept of adding a little water to the wine at Mass is an ecclesiastical one, that these documents support the universally recognised gravity of the precept and that they appear to support the use of epikeia in extreme emergencies.

815, § 2 CR 6/60, 356-7: L. L. McReavy: Quality of Altar Wine. (Reply).

There is no obligation to buy the dearest wine, even when ample Altar Society funds are available.

818 CR 1/60, 33-40: J. B. O'Connell: Sharing in Mass by Attitude and Gesture. (Article).

Active sharing in the Mass demands not only speech and song, but also attitude and ritual gesture. Explanation of significance of chief ritual gestures. Correct ceremonial for standing, kneeling and sitting by the congregation.

822 CM 4/60, 146-148: F. Timmermans: Place for celebrating Mass. (Reply).

Missionary priests normally receive from their Ordinaries the privilege of the portable altar. This privilege can only be used in casu necessitatis, that is, if otherwise Mass could not be said even if there is no other reason to say Mass than the private devotion of the priest. The faculty further states "dummodo nullum adsit irreverentiae periculum et locus decens sit." Fixed rules cannot be laid down to determine what is locus honestus et decens. T. considers the notion is very relative. In a poor missionary community a convert's hut where both men and animals have been gathered for the night could be locus honestus et decens. T. holds that the prohibition "numquam autem in cubiculo" would not prevent a priest from celebrating in such a hut. The canon has in mind houses where there is more than one room, in which case we may not choose the sleeping room. In our case we do not choose the sleeping room but we use the common one—the only one available.

824 § 2 AfER I/60, 12: J. de Reeper: Stipends when binating. (Article).

Cf. cn **806** above.

824, § 2 IER 6/60, 400: T. Cunningham: Stipends for Easter Vigil Mass and Easter Festive Mass. (Reply).

Although the opposite opinion has been defended by some authors, including a Consultor of SCPF, C. holds that as the law stands there is little or no juridical foundation at present for the view that two stipends may be taken for the Easter Vigil and Festive Masses. Since both Masses are on the same day, and the concession makes no mention of any exemption in the matter of stipends, the general prohibition of cn 824, § 1 applies to Easter Masses.

829 IDE I/60, part 1, 137-145: M. Ferraboschi: Onere di messe e svalutazione monetaria. (Casus).

A.A. by a will dated 1909 left land to his heirs, together with the obligation of having 100 Masses said every year, at a stipend of 2 lire each. The official stipend was then L. 1.50 and is now L. 500. F. considers that since the stipend was not laid down taxative, but rather that the number of Masses was the principal object of the bequest, the heirs are still bound to have the 100 Masses said, and that the stipend should be the modern equivalent of L. 2, that is about L. 666.

858 CR 2/60, 105-7: L. L. McReavy: Exactitude in Reckoning the Eucharist Fast. (Reply).

Defence of a previous reply in favour of exactitude (CR 1/59, 36), against the objection that the *terminus ad quem* is unpredictable, that the faithful cannot be expected to have reliable time-pieces, and that the law was made by men of wide humanity in an Eternal City where time is of little consequence.

858 CR 2/60, 107-9: L. L. McReavy: Canonical Senility and the Eucharist Fast. (Reply).

Mere attainment of one's sixtieth year does not automatically entitle one to use the concession made by *Sacram Communionem* to the infirm. At most it provides a canonical ground for thinking that one **may** be infirm enough to benefit. It is a question of fact.

858 § 1 AER 6/60, 423-424: F. J. Connell: Vitamin Pills and the Eucharistic Fast. (Reply).

Vitamin pills are food if taken to maintain health: medicine if a remedy against ailment, even without a doctor's prescription. But the sick person requires a grave reason (leniently interpreted) to take medicine within the restricted period. To take one with water (even though undissolved) brings the whole mixture under beverage rules.

859 CR 4/60, 229-32: L. L. McReavy: Paschal Communion, a Twofold Precept. (Reply).

The Paschal precept is formally two distinct precepts, the distinction between the annual and paschal obligations being not merely juridical but based on a theological reason. One who, having failed inexcusably to fulfil the paschal obligation,

proceeds also to neglect the annual obligation, aggravates his sin, but does not necessarily commit two distinct sins, because the twofold defect can be the object of a single act of will.

867 § 4 AER 2/60, 132: F. J. Connell: Evening Holy Communion. (Reply).

On the occasion of evening Mass there is no objection to the distribution of Holy Communion from another altar.

867 § 4 HPR 3/60, 581-582: C. L. Parres: Late Communion for School outside Mass. (Reply).

It is permissible, especially if there is a good reason, to distribute Holy Communion to school children shortly before noon, outside of Mass.

867 § 4 VR III/60, 146-149: A. Peinador: Comentario al Decreto del Santo Oficio sobre la Comunión en horas de la tarde fuera de la Misa. (Article).

Commentary on the decree of the Holy Office, March 21st 1960, on evening Communion outside Mass.

867 § 4 ST 6/60, 353: E. F. Regatillo: Evening Communion. (Article).

A commentary on the decree of SCSO 21/3/1960, stressing the following: The V.C. can give permission; any function held in common, liturgical or not, is sufficient for permission; one need not assist at the function to receive Communion; in all churches and the semi-public oratories of hospitals, prisons and schools, apparently not others; not in a church in which there is evening Mass, except in connection with the Mass.

LIBER III, PARS I: DE SACRAMENTIS: TIT. IV: DE POENITENTIA

870 AER 5/60, 345-346: F. J. Connell: Ministrations to a Divorced Man. (Reply).

Before hearing his confession, a priest, summoned by a dying man, publicly known as civilly remarried after divorce, should obtain assurance (if possible, in writing or presence of witnesses) that he will remedy situation if he recovers. If assurance is refused, no Sacraments, and, if continued until death, no Christian burial. If unconscious when priest arrives, absolution and Extreme Unction conditionally ("si capax es"); while attested fact of summoning priest suffices for Christian burial.

Loss of consciousness without sign of repentance or desire for Sacraments excludes Christian burial but not conditional absolution and Extreme Unction.

872 NRT 5/60, 470-482: D. Nothomb: La nature du pouvoir de juridiction du confesseur. (Article).

N. examines in detail the nature of the power of jurisdiction necessary for the confessor, and holds that it is simply a question of a "subjective part" (*e.g.*, just as chastity and abstinence are subjective parts of temperance) of the power of canonical jurisdiction. This jurisdiction is neither sacramental nor instrumental. It does not penetrate directly into the forum of conscience by its own activity. Like all other jurisdiction it only operates ab extrinseco; but since it is destined primarily for the private good of the faithful, and depends entirely on the proper act of the power of order, exercised in the words of absolution, it can legitimately be called—although *improperly*—"jurisdiction of the internal forum." In itself it does not merit this qualification: only the power of order can penetrate instrumentally into the forum of conscience.

876 ITQ III/60, 201-220: E. M'Caffrey: Confessors of nuns and sisters. (Article).

Is special jurisdiction required to hear the confessions of women in communi viventium sine votis? Contra: (a) cn 675 does not refer to this canon; (b) this canon makes no mention of them. Pro: (a) cn 675 refers to cns 499-530, some of which presuppose cn 876; (b) finis legis is the same as with religiosae. Both views are solidly probable.

878 **ACR I/60, 39-42: G. C. Gallen: Restriction of faculties for hearing confession.** (Reply).

G. outlines general principles regulating the restriction of jurisdiction for confession and the effect of arbitrary restriction of faculties by the Ordinary. From the wording of cn 878 § 2, it seems that unreasonable restriction by the Ordinary would at most be unlawful. Even with no reason, the restrictive act would be valid.

881 **HPR 3/60, 580-581: C. L. Parres: Pastor and Parishioners on Pilgrimage.** (Reply).

A pastor may hear the confessions of his parishioners *en route* and at places outside his own diocese without jurisdiction from the Ordinary of the place where the confessions are heard. The Pastor's power is ordinary; not so the assistant's, and so he cannot hear confessions outside of the territory of the delegans, in similar circumstances.

883 **HPR 1/60, 377-380: C. L. Parres: Faculties for Confession during Sea Voyage.** (Reply).

"Dummodo . . . facultatem rite acceperint confessiones audiendi . . " in cn. 883 refers to normal diocesan faculties from one of the Ordinaries mentioned in the cn and not to special sea voyage faculties.

889 **AER 1/60, 53-54: F. J. Connell: The Obligation to Denounce Violators of the Sacramental Seal.** (Reply).

No general law of the Church commands that offenders against the sacramental seal are to be reported to the ecclesiastical authorities. However, an instruction of the SCSO (not published in the AAS and not incorporated into the Code) issued 9/6/1915, told Ordinaries and religious superiors to report to the SCSO any serious case of a confessor who would speak imprudently of confessional matter and would not heed the warning given to him. The divine law might at times impose an obligation of denounciation.

889 **AER 2/60, 77-86: Gertrude J. Buck: Confession and the Courts.** (Article).

The extent to which US law protects the seal of confession is shown by an analysis of decisions involving Catholic priests and of state statutes giving legal effect to the priest-penitent privilege. A plea is made for study of the problem of how much freedom should be granted to a penitent in revealing the secrets of the confessional to the civil detriment of the priest, who is not free to defend himself.

902 HPR 6/60, 845-848: C. L. Parres: Confession and Absolution of Pre-Baptismal Sins. (Reply).

After discussing what is sufficient matter for confession P. concludes that, when an adult convert is baptised absolutely, it would seem at least rash to maintain that his pre-baptismal sins can be sufficient matter for the sacrament of penance. In such a case were a confessor to give absolution, where only pre-baptismal sins were confessed, he would be exposing the sacrament to almost certain danger of nullity.

904 PM 5/60, 279-286: P. Boschi: Casi di Sollecitazione. (Reply).

B. thinks that the distinction between "teaching" and "soliciting" in the confessional is too thin. The confessor's "teaching" is done "ex officio" and amounts to practical advice. Still, he does not counsel the formal denunciation of a confessor who agrees generically with married penitents that continence is too difficult.

924 § 2 ST 2/60, 113-115: E. F. Regatillo: Sale of blessed or indulgenced objects. (Reply).

Cf cn **1305 § 1, 2°**, below.

925 HPR 5/60, 762: C. L. Parres: Rosaries Blessed by Pope: What Indulgences? (Reply).

When blessing rosaries, the Roman Pontiff wishes to attach to them the Apostolic Indulgences unless he expressly states otherwise. Apostolic Indulgences are proper and personal to each Pope and are published by him after his election.

925 HPR 1/60, 376-377: C. L. Parres: Making Stations in Reverse. (Reply).

The essence of the devotion of the Way of the Cross is found in the fourteen wooden crosses canonically erected; therefore the indulgences may be gained whether one begins at station No. 1 or at station No. 14.

925 § 1 CpR I-II/60, 54: Anon: Annotations on Indulgence granted by S.P.A., 13/8/59.

It is held that there are good reasons why the indulgences now attached to special prayers for parents said by seminarians may be gained by religious clerics and even other religious. If these arguments are not sufficient then it is hoped that S.P.A. will extend the indulgences to religious.

925 § 2 **AER 5/60, 346-347: F. J. Connell: Indulgence in Distans.** (Reply).

In view of the fact that, outside special concession, true presence appears a necessary requirement, it does not seem that the general absolution of the Franciscans and the attached indulgence can be validly imparted over a loud-speaking system to community members confined to their rooms.

LIBER III, PARS. I: DE SACRAMENTIS: TIT. V: DE EXTREMA UNCTIONE

942 **AER 5/60, 345-346: F. J. Connell: Ministrations to a Divorced Man.** (Reply).

Cf. cn **870** above.

947 **HPR 3/60, 574-580: C. L. Parres: Varia Concerning Extreme Unction.** (Reply).

1. In a case of grave necessity (*e.g.* danger of contagion) an instrument may be used in giving Extreme Unction.

2. Cotton wool on a stick or cotton wool alone might be suitable for this purpose.

3. In a case of apparent death after a single anointing on the forehead there is no obligation to supply anointings of the individual senses, though this may be done.

LIBER III, PARS. I: DT SACRAMENTIS: TIT. VI: DE ORDINE

985 7° ST 1/60, 31-36: F. Regatillo: Irregularidad pro usurpación de orden sagrado. (Article).

R. concludes that irregularity is incurred by the abuse of orders contrary either to divine law (*e.g.*, absolution) or ecclesiastical law (*e.g.*, consecrations) without distinction. Irregularity requires grave sin. It is hard to say in concreto what is grave matter. R. holds that it is verified in consecration and constitutive blessings, not usually in invocative blessings; in other sacramentals reserved to bishops (*e.g.*, tonsure); in those reserved to priests (or, in necessity, to deacons), *e.g.*, full rites of burial; and those reserved to deacons or subdeacons. He therefore replies that the blessing of a font by a person in minor orders, since it is invocative, does not incur irregularity.

LIBER III, PARS. I: DE SACRAMENTIS: TIT. VII: DE MATRIMONIO

1013 D.C. 1321, 7th Feb. 1960, col. 173.

Declaration of the American Bishops on "Birth Control" correcting false views of Catholic teaching. "In her teaching the Catholic Church has always made the distinction between artificial limitation of birth which is simply a frustration of the marriage act and other forms of control of birth which are morally lawful." Questions of method however are not the sole questions in this matter. (An instructive directive by the American Bishops deserving of study).

1013 § 2 AdC 10/60, 153-155: M. Huftier: Au sujet de la Polygamie. (Reply).

A brief study of the extent to which demographic statistics concerning the conditions in polygamous communities may serve the (natural law) argument in favour of the unity of marriage.

1013 § 2 AdC 11/60, 166-168: E. Garrigou: Divorce—Paroles pontificales. (Reply).

In reply to a question which suggests that the Church has modified her teaching, G. cites and analyses recent papal documents, which re-affirm and explain the traditional doctrine concerning the indissolubility of marriage.

1014 CR 1/60, 41-4: L. L. McReavy: Canon 1014 and the Modern Attitude to Divorce. (Reply).

However widespread the error that marriage is dissoluble, the principle of cn 1014 remains valid. Out of respect for the divine law, the Church must regard the parties to an outwardly valid marriage as bound by its intrinsic obligations, until they **prove** that their consent was limited by a positive act of will to a dissoluble contract. Text of Rotal sentence, *coram* Heard, in a Westminster case of this kind.

1014 IDE I/60, part 2, 3: See can. **56** above.

1015 § 4 ME I/60, 141-150: L. Bender, O.P.: Filiae Legitimae Ratione Matrimonii Putativi. (Casus).

Barbara, baptized a Catholic, of pious and good character, wished to enter a religious congregation which had educated her. Her mother, a Calvinist and a divorcee, married her father Paul in the register office. According to the constitutions of the particular religious congregation no illegitimate child could be permitted to enter. Was Barbara legitimate or illegitimate? Was the decree of the PCIC of 26th January 1949 declarative or explanatory? If declarative Barbara is illegitimate, if explanatory, she would be legitimate. Bender decides in favour of the latter in spite of the weight of canonical opinion holding there is at least a *dubium iuris*. He says that the error of these canonists is entirely subjective, for the law of cn. 1015 § 4 was certain. Hence poor Barbara had to remain in the world.

1015, § 4 IER 1/60, 50: T. Cunningham: Invalid Protestant Marriages not Putative. (Reply).

The invalid marriage of two Protestants in a Protestant church is not putative because it does not qualify for the description "celebratum coram Ecclesia" of cn 1015, § 4 and PCIC 26/1/1949. The canonical effect of legitimacy attached to certain invalid marriages comes solely from the express concession of the Church, and the legislator did not

intend to include invalid Protestant marriages under those invalid marriages which are celebrated coram Ecclesia. Private replies (1957, 1958) confirm that this is the correct interpretation of "celebratum coram Ecclesia."

1016 IDE II/60, part 2, 111-142: Civil Effects of Marriage.

Five cases are discussed concerning the civil effects of canonical marriages. One is very interesting—the unbaptized parties, having contracted a civil marriage before the Concordat, are subsequently converted to Catholicism, and not having consummated the marriage since their conversion are granted a dispensation *super rato.*

1028 RDC 1/60, 48-60: L. Bender, O.P.: Licita assistentia et dispensatio in publicationibus. (Reply).

Cf. cn **1097,** below.

1035 CR 3/60, 173-5: L. L. McReavy: Right to Freedom from Invalid Marriage. (Reply).

A Catholic woman who, in order to persuade a convinced Protestant to marry her, pretended that she had given up her faith, and contracted with him in his church, and then separated from him when he refused to convalidate the marriage, acts unjustly in refusing to consent to the civil divorce needed to enable him to exercise his natural right to marry.

1060-1064 AfER I/60, 17: B. Peltier: Defective promises. (Casus).

Cf. cn **1071** below.

1060 AdC 21/60, 329-331: M.H.: Athéisme et mariage. (Reply).

The case is quoted of an unfrocked priest, turned atheist, who obtains a dispensation "disparitatis cultus" and marries coram Ecclesia. M.H. distinguishes: if laicisation has taken place (cf. cn 211 § 1), the priest is still not free to marry (cn 213 § 2), and will have applied for the dispensation so as not to have to produce a baptismal certificate; it might also be a case of a priest who has been laicised having been ordained "metu gravi coactus" (cn 214 § 1), and not having ratified his ordination is laicised without any obligations of celibacy or Office.

As regards the marriage of atheists coram Ecclesia, they are to be treated according to cn 1060 in the same way as a person enrolled in a heretical or schismatic sect (cf. PCIC 30/7/1934; AAS p 494). Cns 1065 § 1 and 2 and 1065 are also to be taken into account.

1061 J I/60, 78: Sanatio: Refusal to Sign Cautiones. (Casus).

Lucia, a Catholic, civilly married Titius, a non-Catholic. She wished to return to the sacraments and to have her children baptized. Titius refused to sign and fulfil the cautiones: Lucia could teach them anything she wanted about religion, but he would do the same. All the documents, including Titius' reservations on the cautiones, were sent to S.C.S.O. Granted: November 12, 1955.

1066 PM 4/60, 221-4: L. Bender: Matrimonium duorum communistarum. (Reply).

The P.P. can assist at the marriage of two publicly-known communists without the consent of the Ordinary if the marriage is performed privately without a sacred function (*e.g.* in the sacristy).

1067 J I/60, 30-41: J. J. O'Rourke: The Scriptural background of Marriage Impediments. (Article).

O'R. compares the diriment matrimonial impediments contained in the CJC with those contained in the Bible.

1069 § 2 ST 6/60, 366-369: E. F. Regatillo: Conflict between two marriages. (Reply).

Laura, a Catholic, married Rudolph in 1927, but Regina, a Protestant, appeared and declared she had previously married Rudolph. Laura then left him, later divorced him, and went through a civil marriage with Jerome. She now wants things put right but cannot establish whether the Regina-Rudolph marriage was valid or not. R., in view of the solid probability of the validity of the Rudolph-Regina marriage, and the consequent doubtfulness of the marriages Rudolph-Laura and Jerome-Laura, quotes PCIC 26/6/47 and concludes that unless the tribunal declares the first marriage valid, the parties to the second may be left in good faith. Indeed, quoting Pius XII to the Rota (3/12/41), he holds that the judge may pass a sentence favourable to the second marriage if the arguments in its favour are much more cogent.

1070 J II/60, 218-219: M. Diederichs: Disparity of cult and determination of rite. (Casus).

D. here gives a marriage case recently solved through a response from the S.C. Oriental Church. This case provides an interesting insight into the application of the impediment of disparity of cult in the Oriental Church and the determination of rite.

1070 J I/60, 69: Sentence of S.C.S.O. (12/2/58) Disparity of cult: unusual case. (Casus).

C.D., allegedly unbaptized, contracted marriage with E.F., said to be a baptized Catholic, before a Protestant minister. The petitioner, after civil divorce, lived in marriage with H.L., a Protestant, both of whom desired to embrace the Catholic faith and to regularize their marital position. The S.C.S.O. gave a *constat* to C.D.-E.F. because of disparity of cult. The remarkable thing in this case is that the only proof for the presence of the impediment of disparity of cult was the woman's own statement that the man had informed her that he was a baptized Catholic born of Catholic parents, and her statement that she herself had been told by her own parents that she had never been baptized.

1071 AfER I/60, 17: B. Peltier: Defective promises in disparity of cult dispensation. (Casus).

Titius, a pagan, marries Caia, a Catholic, with a dispensation. Titius gives only one promise, *viz.*, to bring up any children as Catholics. Caia does not give any promise. If after investigation there is (a) moral certitude that all the guarantees were given at least implicitly, though gravely unlawful, the dispensation and marriage are valid; (b) moral certitude that the guarantees were not all given, even implicitly, the dispensation and marriage are invalid—but this must be proved by a collegiate tribunal; (c) a doubt about the implicit giving of the guarantees:

(i) if possible convalidate simply ad cautelam,

(ii) if impossible leave the parties in good faith—or a sanatio may be sought (AfER II/60, 118),

(iii) if opportune and possible, declare this marriage invalid by a formal trial before a collegiate tribunal.

1074 ME I/60, 117-122: Vicariatus Urbis: Sentence, 20/11/1958: Abduction.

The "in jure" section of the sentence, a good account of the law on abduction when the violence used is moral, "dolosa" rather than physical. The Court held that abduction or retention by fraud or deceit does not necessarily imply that the woman is unwilling as regards abduction, marriage or both, but does establish a juridical presumption of unwillingness, which can be rebutted if the woman is made aware of the fraud, and then freely consents to abduction, retention and marriage. (Cf. IDE I/60, part 2, p. 11).

1074 IDE I/60, part 2, 8-11: Vicariatus Urbis tribunal primae instantiae: Impediment of Abduction: Coram Santini (8/6/1959).

In order to constitute the matrimonial impediment of abduction it is not necessary that physical violence be used. It suffices if the woman is afraid to escape or if she has promised not to do so. This impediment ceases only if the woman is separated from the man and effectively freed from his influence. The woman is not sufficiently free if she is separated from the man only during the parish priest's interrogation. The canon demands absolute separation with complete cessation of the man's influence. Otherwise the law is futile.

1076 IDE I/60, part 2, p. 3: See can. 56 above.

1078 Ap. III-IV/59, 347-359: V. Mocnic: Quasiaffinitas et infideles. (Article).

"Quasiaffinitas" is the term chosen to indicate the relationship, in the circumstances of cn 1078, "inter virum pseudoconiugem et consanguineas mulieris pseudoconiugis, ac vice versa"; "publica honestas" (which is merely "naturalis quaedam decentia") presupposes "quasiaffinitas." Can it arise in the case of the unbaptised? M. outlines the teaching of canonists, considers the relevance of "copula carnalis" to the issue, examines the intrinsic nature of "quasiaffinitas" (is it a natural or only a legal bond?); and he concludes that "quasiaffinitas" (and therefore the impediment of "publica honestas") will not arise unless: (a) at least one of the parties to the basic invalid marriage or concubinage (cn 1078) be baptised; and (b) both parties to the proposed marriage (*i.e.*, the man and the female blood-relative of the woman to whom he had been invalidly married or with whom he had lived in concubinage; or vice versa) not only be baptised now but, in addition have been baptised at the time of the basic invalid marriage or concubinage.

1081 IDE II/60, part 2, 80-85: Rotal Sentence, 21/10/1959: Coram Lamas: Mental Weakness.

The opinion of some American psychiatrists, who hold that schizophrenia is permanently curable, is not to be accorded much probability. Once serious schizophrenia is proved, in spite of lucid intervals, it can be considered incurable.

1081 § 2 ME I/60, 107-115: Rotal Sentence: Deficient consent, 14th April 1956. Coram Mattioli.

An interesting case of nullity because of the peculiar philosophical concepts of the respondent. Ada and Leo married in 1940 and separated in 1946 because of Leo's philosophical tenets which made him wish to rule conjugal life by principles against the natural law and in a completely abnormal manner. Ada's Bill of Pleading was three times rejected by the Milan court, then accepted, but a contrary sentence was passed against her. The case was appealed to the Rota who tried it and gave a *constat* sentence on the grounds that the man because of his intellectual incapacity to think straight about marriage was unable to give the required consent to make the contract valid. But Leo was forbidden to marry again unless before the Bishop or his delegate and under oath that he gave his consent according to the norms of canon law.

1082 § 1 ME II/60, 279-288: Tribunal Quebecense-Trifluviense.

Definitive sentence, 10th June 1957, by which a *constat* was given owing to the mental illness of the wife. G. and Y. married in 1953. Some months after marriage the wife had to receive psychiatric treatment and was detained in a mental hospital for two years. The husband was most reluctant to resume conjugal life with her. He found life with her intolerable. The marriage was declared null because it was found that the wife had been suffering from progressive schizophrenia before her marriage to G. and had been incapable of true matrimonial consent.

1086 AfER II/60, 117: E. de Bekker: Exclusio boni fidei. (Casus).

Titius, a pagan, goes through a civilly legal marriage with Bertha, a Catholic, the marriage being invalid in the eyes of the Church. Titius now wishes to marry her in forma, so that Bertha can fulfil her duties as a Catholic; but he refuses to dismiss Caia, his concubine. Reply: they must separate, for a convalidation or a sanatio are impossible as long as Titius excludes bonum fidei.

1086 ME II/60, 273-279: Rotal sentence: Defective consent, 1st June 1956. Coram Mattioli.

A *constat* sentence was given in view of the woman's wrong upbringing and her totally wrong notions concerning marriage. Alvaro, a Grandee of Spain, fell madly in love with Winefred, an American, the offspring of a mixed marriage,

who was baptized a Catholic but had received no Catholic or Christian upbringing at all. She left her parents while still a minor, and, changing her name, joined a group of dancers. Alvaro fell madly in love with her and wanted her to marry him in the Catholic Church. She absolutely refused since the idea of an indissoluble marriage was entirely repugnant to her way of thinking, for she wanted a way out if the marriage should prove unsuccessful. Alvaro, albeit reluctantly, married her before a civil official. But by dint of gentle persuasion he got her to have the marriage convalidated in the Catholic Church. She brought in a plea of nullity on the ground of simulation.

1086 § 2 AdC 2/60, 25-27: A. Bride: Peut-on marier religieusement un futur qui admet la légitimité du divorce, mais s'engage à n'y pas recourir? (Reply).

The case is of a person who, having been baptized a Catholic, joins the Jehovah's Witnesses and, on proposing to marry a Catholic, announces to the priest: (a) that he believes (on the basis of Matt. XIX, 9) that he has the *right* to a divorce in the case of his partner's adultery; but (b) that he renounces this right in respect of his now-proposed marriage.

Could this be a valid marriage? Yes: the person, though labouring under "simplex error" concerning indissolubility (cn 1084), does not exclude it "positivo voluntatis actu"; au contraire.

Quid in praxi? The case is to be referred to the Ordinary; it will be dealt with as a mixed marriage.

1086 § 2 PM 1/60, 49-51: P. G. Oesterle: Voluntas se obligandi et voluntas non adimplendi ad tempus vel in perpetuum in ordine ad prolis generationem. (Article).

The right given in marriage is a right to conjugal acts. The obligation contracted is an obligation to render conjugal acts (ius ad usum corporis—obligatio ad actus). We cannot then distinguish between "voluntas se obligandi et voluntas non adimplendi" in regard to this primary obligation arising from marriage. Also a condition excluding conjugal acts necessarily vitiates consent.

1086 § 2 PM 4/60, 216-221: A. Gregnanin: Voluntas se obligandi et voluntas non adimplendi sub forma conditionis. (Article).

G. wishes to examine the jurisprudence of the Rota in the last twenty years concerning the above. The decisions

presume "presumptione iuris" the exclusion of the ius. The expression of this presumption sometimes takes on an aspect of certainty.

1086 § 2 IDE II/60, part 2, 72-75: Rotal Sentence: 13/11/1959: Coram Sabattani: Matrimonial Consent.

If the intention of not fulfilling the matrimonial obligation is a condition or part of the marriage contract it can invalidate the marriage, but if it does not enter into the contract and has a completely different object it in no way vitiates the marriage. It is usually useless—and could even be dangerous—to ask the parties or the witnesses if the object of the exclusion was the obligation itself or just its fulfilment, as technical knowledge is required to answer such a question. The loose living of one of the parties after marriage is slender proof of the exclusion of bonum fidei.

1086 § 2 IDE II/60, part 2, 75-77: Rotal Sentence, 23/1/1959: Coram Sabattani: Matrimonial Consent.

The intention of one of the parties to exclude conjugal acts until the occurrence of a definite event is not necessarily against the substance of the marriage, but should be considered rather as a suspending condition. Such a condition is a sound proof in favour of the non-consummation of the marriage.

1086 § 2 AdC 15/60, 236-238: A. Bride: Peut-on marier religieusement celui qui affirme son intention de divorcer même hypothètiquement? (Reply).

The case is of a person who, in reply to the prenuptial questionnaire, while acknowledging marriage to be an indissoluble union, makes it clear that he would seek a divorce if his spouse were to prove unfaithful—not that he might re-marry ("once would be enough!"), but rather that his unfaithful wife would not even retain his name.

Could this be a valid marriage? Yes, if (but only if) the person's intention was to seek a divorce solely for its "civil effect."

Quid in praxi? The case ought certainly be referred to the Ordinary: obviously, if the priest, after investigation, remained doubtful about the person's precise intention; but even if there were no doubt on this point, because of the popular conception of divorce as (almost exclusively) a direct attempt to sever the marriage bond.

1086 § 2 ST 6/60, 364: E. F. Regatillo: Condition contrary to the substance of marriage. (Reply).

The intention to commit adultery is treated by the authors as against the unity of the marriage. They do not mention the intention to commit sodomy or bestiality. It would seem that these should be equivalent to adultery as far as separation is concerned, but it is by no means certain whether this would apply to nullity.

1087 § 1 Ap. III-IV/59, 331-346: S. R. Rota (coram Felici:) Nullit. matrim. ex metu reverentiali (Judicial Sentence).

This Judgement of the Rota in a case of fear (which has reached the 4th instance) is interesting for two main reasons: (a) its insistence that, since "metus reverentialis," though per se not grave, may well in any given case be grave for the "metum patiens," care must be taken to investigate the individual circumstances of each situation; the legal presumption "de metus reverentialis levitate" is merely a starting-point; (b) significant admonition that judges must base their decisions exclusively on the "acta et probata" of the case (cn 1869 § 2), and never "ex officiosa aliqua et maxime periculosa suggestione. . .".

1089 IDE II/60, part 2, 87-111: I. Spada: Forse che si, forse che no.

Summary of a case concerning the validity of a marriage by proxy, in both civil and canon law.

1092 IDE II/60, part 2, 75-77: Rotal Sentence, 23/1/1959: Coram Sabattani: Matrimonial Consent.

Cf. **1086** § 2, above.

1092, 4° IDE II/60, part 2, 77-80: Rotal Sentence, 17/6/1957: Coram Sabattani: Conditional Consent.

The difference between a prerequisite and a condition lies in the evolution and the intensity of the will. The positive act of the will, by which one of the parties subordinates his own consent to the existence of a certain quality in the other party, can even be explicit and assumed from a variety of objective and subjective criteria such as the importance of the quality, post-marriage behaviour, etc. The sooner one declares one's marriage invalid on account of the non-fulfilment of a condition and withdraws from one's partner, the

easier it is to prove conditional consent. A doubt is not absolutely necessary in a condition de praesenti. And subsequent certainty has no effect on conditional consent.

1094 IER 1/60, 54: T. Cunningham: Non-Catholic Bridesmaid at Catholic Marriage. (Reply).

Non-Catholics are not to be admitted as witnesses unless for a grave cause and where there is no scandal. These conditions are usually verified if the non-Catholic is a relative. The source of the prohibition is a reply of the Holy Office in 1891 which is still binding in so far as it enunciated the divine law, *i.e.*, exclusion of heretics if their participation in Catholic rites would cause scandal or imply unity of worship.

1095 J I/60, 55-62: C. V. Bastnagel: Undelegated assistance at marriage. (Article: casus).

The problem considered here is whether in cases where a priest has not been delegated to assist at a marriage the presence of common error can save the validity of the assistance. B. holds that the matter was not completely settled by the affirmative reply of the Code Commission on March 26, 1952. Cn. 209 looks to the common good and not simply to the interests of individuals as such. The common good evolves out of a status or situation in which that good results from a repeated performance of some act or function. The reply of the Code Commission served primarily to confirm that the benefits of cn. 209 prove available for non-jurisdictional as well as for jurisdictional functions. It added nothing to the concept of common error and did nothing to determine the occasion on which a common good is involved.

1096 § 1 HPR 2/60, 470-474: C. L. Parres: Pastor Granting General Delegation for Marriages. (Reply).

A pastor may give general delegation for marriages in his own parish to his assistant, even if the Ordinary does not include this delegation in his diocesan faculties. No other priest can be given general delegation by the parish priest or by the Ordinary. (Special rules apply to military chaplains and to Orientals).

1096 § 1 Per II/60, 191-203: L. Bender: Quaestiones de delegatione. (Casus).

(1) When, in view of a particular marriage, the P.P. gives explicit general (invalid) delegation to a curate from another parish, the marriage is valid. The single act of delegation is virtually twofold; the P.P. has this marriage particularly in mind. This solution is independent of implicit delegation arising from the P.P.'s. behaviour. (2) (a) The P.P.'s written general delegation of his curates, preserved but deliberately not communicated, does not safeguard marriages when particular delegation is lacking. There must be notification and acceptance. (b) Curate's discovery of the written form does not constitute delegation. This solution is given hesitatingly; B. favours the opinion requiring notification by the delegans, not by chance.

1096 § 1 AfER II/60, 108: E. de Bekker: Supplied jurisdiction in common error. (Casus).

Cf cn **209** above.

1097 RDC I/60, 48-60: L. Bender, O.P.: Licita assistentia et dispensatio in publicationibus. (Reply).

(1) Which parish priest has "ius assistendi matrimonio"? Amongst others the PP of a month's residence, and he may commence the pre-nuptial enquiry before the month is up, provided it is prudently foreseen that there will be a month's residence at the time of the wedding. No law forbids taking up a month's residence in order to avoid being married in the home parish, but it is certainly against the spirit of the law, and a PP would be wrong to persuade a person to do so. (2) Who is dispensed from calling the banns? The parish priest? the parties? or both? In pre-code law it was both parish priest and parties, but now according to B it is the PP as parochus of the parties. Which Ordinary dispenses? the Ordinarius proprius, *i.e.*, the Ordinarius not of the parochus but of the parties, but he dispenses the parochus, even if otherwise not his subject, because of the special relationship between the parochus "cui ius est assistendi matrimonio" and the parties.

1098 CM 1/60, 25-27: F. Timmermans: Casus de validitate matrimonii.

Cecilia, a lapsed Catholic, went to live in a region where the nearest Catholic church was more than thirty miles away. No priest ever visited the region. There she married Leo, a non-Catholic, before witnesses but without a priest. She has left Leo and returned home. Now she wants to marry a well disposed Hindu who is ready to become a Catholic.

Was C's marriage invalid for lack of form? Cn 1098 applies. Two questions to be answered. Is knowledge of extraordinary form and intention to use it necessary for validity? What sort of prevision do the words "dummodo prudenter praevideatur" demand? There is no reason to hold that knowledge and intention to apply the canon is required for its valid use. But, is de facto prevision demanded by dummodo clause or will de iure prevision suffice? Bidagor and Bender both conclude de iure is sufficient. This agrees with pre-Code discipline. If de facto prevision were intended the canon should determine who has to make that prevision. The de facto interpretation would exclude from the benefit of the canon all who are ignorant of the canon and its requirements. The de iure interpretation is simpler and can be accepted if it agrees with the text, context and the aim of the law. Bidagor, Bender and Zalba accept it. S. therefore concludes that C. is validly married to Leo and cannot consider any second marriage.

1098 ST 5/60, 293-6: E. F. Regatillo: Marriage coram testibus. (Reply).

Christians who marry before witnesses in mission lands do not do so invalidly even if ignorant of the possibility of marrying validly without a priest, if they have no idea of contracting a sacramental marriage thereby, or if they think the civil marriage so performed is dissoluble. Such marriages must therefore be presumed valid, unless there is a diriment impediment or contrary proof.

1099 J II/60, 159-178: J. C. Barry: The Tridentine form of marriage: Is the law unreasonable? (Article).

B. holds: (1) that the law regarding the Tridentine form for the celebration of marriage is anomalous, defective, impracticable, and contrary to the traditional mens Ecclesiae in these matters; the law therefore ought to be modified; (2) that the law which renders null and void marriages contracted without the canonical form by those bound to it is contrary to the good

of souls and in the long run a very fruitful cause of leakage from the Church. The law in this respect should therefore be changed, preferably by abolishing the invalidating clause; the marriage of Catholics in the Church must still be insisted on, but not sub poena nullitatis. B. ends by examining the advantages and the difficulties of his suggested change in the law.

1100 CME 1/60, 49-52: J. Rabau: De novo ritu ineundi matrimonii in Belgio. (Article).

The new rite of matrimony, granted by the S.R.C. for all Belgian dioceses on June 24, 1958, includes four sections. (1) At the entrance to the church, where the priest meets the persons to be married and from whence he accompanies them to the altar, while the clergy and the congregation sing ps. 127 in the vernacular. (2) The celebration of marriage proper with a few appropriate words by the priest; if there is no Mass, the epistle and the gospel of the votive Mass are read to the couple. The formulas used stress the mutual consent and its confirmation by the priest in the name of the Church. (3) The blessing and giving of rings; it is not the priest, but the persons to be married who pronounce the accompanying formula. (4) A prayer of all those present for the newly-married. It is in the form of a litany, which tends to show that the newly-married may rely on the prayers of the parish for the protection of their conjugal fidelity.

1118 P 5/60, 481-2: P. R. Coyle: Separation and Civil Law of U.S.A. (Reply).

There is much divergence between different States. (1) Absolute divorce in every State. (2) Legal separation in 33 States. This means that in the other 15 (listed) the only redress for the injured party is divorce. (3) Alimony, without divorce or separation is granted in all except New Hampshire. The States differ also in causes for each of these three actions —examples given.

1120 L I/60, 131: Fr. Anastasius, OFM., Cap.: Ecclesiae potestas in vinculum matrimoniale. (Article).

A. emphasizes the distinction between the general vicarious power of the Roman Pontiff and his jurisdictional power over the members of the Church. He maintains against de Lery (CLA, 4, 25) and others that the Pope can, in virtue of his vicarious power, dissolve the matrimonium legitimum of two unbaptized persons, both remaining unbaptized, who have

already obtained civil divorce and one of whom has since contracted a civil union with a Catholic for whose benefit the position needs to be rectified. A. quotes S.C.S.O. decision (11/5/1958) granting such a dispensation.

1127 CM 5/60, 189-190: F. Timmermans: Privilegium Fidei. (Reply).

S. a doubtfully baptized Protestant married her second cousin A. before the Registrar. A. is a Hindu. Separation followed. A. now asking for Baptism wants to marry C., a Catholic girl. Can the Ordinary apply cn 1127 and allow A. after baptism to marry C.?

If S. was validly baptized at the time of her marriage with A. she was bound by the diriment impediment of consanguinity. If she was not baptized her marriage with A. was a marriage between two non-baptized persons and is subject to the Pauline privilege. In neither case will there be a marriage between a baptized and a non-baptized person. Hence cn 1127 can be applied. There is no need to make the interpellations for the precise doubt is whether S. is married to A. The fact that cn 1127 has been applied and the reasons for its use should be indicated in the matrimonial and baptismal registers.

1127 J I/60, 72: Privilegium Fidei: Granted without conversion of petitioner. (Reply).

In a privilege of the faith case the petitioner, a baptized non-Catholic, was not yet ready to become a Catholic, but was willing to have her civil marriage to a Catholic revalidated and to raise her children as Catholics. The S.C.S.O. was asked that the condition praevia conversione be removed and that the Ordinary be allowed to grant the necessary dispensation for the mixed marriage. The S.C.S.O. replied: Affirmative.

1127 J I/60, 72: Privilegium Fidei: Permission to marry a non-Catholic. (Reply).

In a privilege of the faith case the S.C.S.O. was asked that the petitioner might keep company, with a safe conscience, with a non-Catholic man with a view to eventual marriage. Reasons: danger that the petitioner might neglect being baptized, danger to the faith of her two Catholic children, etc. The S.C.S.O. granted permission to marry a non-Catholic and granted a dispensation from mixed religion and, ad cautelam, from disparity of cult, provided she was baptized.

1127 AfER II/60, 117: E. de Bekker: Ordinary's reservation of cn 1127. (Casus).

Fr. N. uses cn 1127 to dissolve a certainly doubtful marriage between two unbaptised persons. One of the partners is baptised and contracts a new marriage. Fr. N. now recalls that the Ordinary has reserved the use of cn 1127 in his Archdiocese. The new marriage is, however, valid, for, though the Ordinary can reserve to himself the decision on the existence of the conditions required for its use, he cannot forbid the use of cn 1127 altogether, nor can he invalidate its use.

1127 AfER II/60, 117: E. de Bekker: Use of Romani Pontificis. (Casus).

Titius, a doubtfully baptised Protestant, separated from his unbaptised wife, "marries" Bertha. Titius and Bertha are now catechumens. Their union can be rectified, after the baptism of both, by applying cn 1127—not to permit the use of the Pauline Privilege—but of Romani Pontificis.

1131 § 1 PM 6/60, 357-359: Onanismo come causa di separazione dei coniugi. (Article).

Onanism constitutes a "grave periculum animae coniugis" —so also does "coitus interruptus," sodomy, abortion. They are therefore just causes of separation. If the "periculum" is not otherwise removable one is obliged to separate.

1131 ST 1/60, 45: E. F. Regatillo: Separation because of fault of both parties. (Reply).

Both parties applied for a judicial separation, and both were clearly to blame for the pin-pricks which made life intolerable for both. Although mutua injuria compensantur, the judge may pass a decree of separation, durante causa or ad tempus definitum, declaring both parties culpable.

1135 § 3 PM 6/60, 353-57: P. Oesterle: Privatim et secreto. (Reply).

"Privatim" is here opposed to "forma iure praescripta" "Secreto"—the act must be so placed that it will remain unknown.

1139 § 2 J I/60, 78-79: Sanatio: Exception to cn 1139 § 2. (Reply).

A.B. asked for a sanation of her marriage invalidly contracted with C.D. whose legitimate wife had since died. The S.C.Sac. was asked to grant a sanation of his second marriage, from the moment of the death of his first wife. Granted: 9th February, 1957.

1145 **CR 3/60, 175-6: L. L. McReavy: The Blessing "in Periculis Partus."** (Reply).

To treat the blessing as applicable throughout pregnancy, without apostolic indult, would involve a modification of a sacramental contrary to the prohibition of cn. 1145.

1165 **CR 1/60, 46: J. B. O'Connell: Opening of a Church.** (Reply).

A brief statement of the canonical and ritual requirements for the opening of a new church.

1168 **CR 5/60, 303-5: J. B. O'Connell: Titulars and Patrons.** (Reply).

An explanation of the distinction between the titular of a church and the patron of a place from both the canonical and the rubrical point of view.

1170 **ST 3/60, 169-170: E. F. Regatillo: Part of a cemetery turned over to burial of those denied ecclesiastical burial.** (Reply).

The Code says nothing about execration of a cemetery, so the cns referring to churches should be applied per analogiam. The Ordinary can therefore decree that a part of a blessed cemetery be reduced to profane use in this sense. Christians buried there should be re-interred elsewhere.

1172 **AdC 19/60, 294-6: A. Bride: Un oratoire qui a subi de longues et importantes réparations, a-t-il besoin d'une réconciliation ou d'une nouvelle bénédiction?** (Reply).

The question concerns a semi-public oratory which is undergoing repairs, in the course of which the workers laugh, sing, smoke, eat and drink in the oratory. B. notes that cn 1172 (violatio ecclesiae) does not apply to a *semi*-public oratory (cf. 1191 § 1, 1196), as semi-public oratories are not subject to the same canonical norms as a church or public oratory. For the erection of a semi-public oratory no dedication, consecration or even blessing is necessary. Nor are the actions of the workers sufficient to constitute the "usus sordidi" ". . . quibus ecclesia *addicta* fuerit," mentioned in cn 1172.

1205 § 2 **ST 4/60, 237: E. F. Regatillo: Burial in a crypt.** (Reply).

As far as burial is concerned, the crypt is considered equivalent to the church, if it is a true church (PCIC 16/10/1919). If the crypt is not used for worship, burial in it is not forbidden. Public oratories follow the same rules as churches.

1240 § 1, 6° AER 5/60, 345-346: F. J. Connell: Ministrations to a Divorced Man. (Reply).

Cf. cn **870** above.

1245 § 1 IER 3/60, 181: T. Cunningham: Parish Priest's dispensation from the law of fasting. (Reply).

(a) The PP's power may be exercised throughout the year. Express mention of his power in Lenten Regulations does not and cannot confine that power to Lent.

(b) Non-subjects as well as subjects may be dispensed.

(c) Just cause for dispensation is required *ad valorem* (cf. cn. 84, §)1. Since the fasting obligation is grave, the just cause too must be *grave* (without amounting to an excusing cause) and *extrinsic* to the object of the obligation. Granting a dispensation *on condition* that a contribution will be made to a pious cause is beyond power of all but the legislator or his delegate. Yet, *secluso scandalo*, it might be granted in recognition of a past generosity to a pious cause. The final decision on the sufficiency of the cause is left to the prudent judgment of the PP.

1248 PM 3/60, 160-6: P. Trabucchi: Evoluzione del concetto del riposo festivo. (Article).

A brief historical sketch of the evolution of the term "Sunday Rest" in the Old Testament and early Christian times.

1248 F 6/60, 357-363: J. McCarthy: Servile Work. (Article).

After an historical survey and a critical analysis of the concept of servile work, M. proposes as a realistic definition: "Servile work is the day-to-day occupation whereby a man earns his livelihood whether the occupation be in unskilled labour, in a trade, in an office, in a profession, in a studio. This is the kind of occupation from which one must abstain, apart from necessity, on days of precept." The whole issue of F. is concerned with various aspects of "The Lord's Day."

1248 L II/60, 178: Fr. Miguelangel de Espinal, OFM., Cap.: El "opus servile" en los Franciscanos de la edad media. (Article).

An examination of the doctrine first suggested among Franciscan theologians by Alexander of Hales and more fully elaborated by Richard of Middleton (both English friars) that the finis operantis is the determining factor in the moral

aspect of servile work. Franciscan theologians generally have favoured the view that work materially liberal can be formally servile and forbidden therefore on Sundays and holy days.

1248 ST 3/60, 171: E. F. Regatillo: Obligation of hearing evening Mass. (Reply).

R. adds his authority to the universal view that those who cannot hear Mass on Sundays in the morning, and can do so in the evening, are bound to do so.

1252 § 2 J II/60, 220-226: J. J. Dziadosz: The Christmas Vigil controversy. (Article).

D. discusses the decree of the S.C.C., 3rd Dec., 1959, in which was granted to all the faithful the favour of being able to anticipate the Christmas Vigil in the matter of fast and abstinence. He examines the nature and effect of this decree, the conditions required for the exercise of the faculty granted by it, and the powers of bishops in this matter. The decree in no way affects cn 1252 § 2.

1252 § 2 AdC 1/60, 15: M. Noirot: A propos du jeûne et de l'abstinence de la vigile de Noël (rectification).

The anticipation of the Christmas Eve obligation of fast and abstinence on 23 December, in accordance with Decree of S.C.C. 3 Dec. 1959, is facultative, not obligatory: each individual may select either day. This view, which is the common interpretation, corrects the opinion expressed by the same author in AdC 48/59, 787.

1252 § 2 CpR I-II/60, 47-49: A. Diez: Commentary on Decree S.C.C. 3/12/59.

The faculty granted to alter the Christmas Eve fast to the previous day extends to Religious. Determination of the day rests with the individual. If, after determination, he is prevented from fulfilling the obligation on that day, there is no further obligation. D. thinks the mind of the Decree is: if possible one should fast and abstain on Dec. 24, and use 23rd only for just cause. It is a definitive change of cn 1252 and not a temporary indult.

1252 § 4 VR II/60, 105: G. M. de Antoñana: Ayuno en el Sábado Santo. (Reply).

When the Paschal Vigil is legitimately anticipated, the Lenten fast ends with its celebration and not at midnight.

LIBER III PARS III: DE CULTU DIVINO

1257 EL I/60, 56-57: B. Puschmann: Annotations on Letter of S.C.S.O. 23/12/58 to Card. Frings.

Despite the Instruction of the S.R.C. of 3/9/58, German dioceses may retain 3 modes of assistance at "Missa lecta" granted in 1943 and 1955—Gemeinschafte messe, Betsingmesse, deutsches Hochamt. The concession is confined to these three modes of assistance and may not be extended.

1258 § 1 AER 6/60, 424-425: F. J. Connell: Problems of the Funeral Director. (Reply).

A Catholic funeral director may co-operate by preparing his chapel in advance and allowing a non-Catholic clergyman to conduct even a public service there for a deceased person. A Catholic singer and organist may perform only if the service is private, there is no scandal and the hymns are orthodox. The service is private if performed by a layman, public if by a clergyman, particularly if he wears some form of clerical garb.

1258 ST 4/60, 240: E. F. Regatillo: Communicatio in sacris. (Reply).

Since communicatio implies common action or presence, listening to Protestant services on the radio does not come under this category, but rather under the laws regarding the magisterium. If there is no good reason for listening, they should not be listened to, because of the attendant dangers.

1264 ME II/60, 197-219: Apostolic Letter of Pius XII, 8th June 1956: Sanctus Dominicus Savio, Confessor, Caelestis Puerorum Cantorum Patronus Eligitur. (A.A.S. 40 (1957), 199-200).

There is a very full set of annotations by F. Romita giving a history of boy singers in the Church, their decadence because of the introduction of eunuchs, their restoration by Pius X and F. Perosi, a glance at various national associations of boy singers, and the formation of an international association of the same.

1269 § 4 AER 3/60, 199-201: J. P. McCormick: Tabernacle Key. (Reply).

An instruction of the S.C.S., 26/5/1938, on the Careful Custody of the Most Blessed Eucharist, discussed in detail the safe custody of the tabernacle key. The ambry is not a proper place for it.

1271 IER 5/60, 333: G. Montague: Candle as Sanctuary Lamp. (Reply).

A wax candle may be used in the sanctuary lamp. In Ireland, England and Wales it must contain 65 per cent beeswax. In other countries where the question has not yet been decided by the Hierarchy, candles of 75 per cent beeswax should be used. cf. SRC, Dec. 1904 (No. 4147) and 13th Dec. 1957.

1281 § 1 VR II/60, 106: A. Peinador: Aplicación de Donativos. (Reply).

If objects are offered at an altar or before an image (votive offerings), they cannot, whatever their value, be alienated without the permission of the Holy See, even if the donor consents. If they are donations to a church or religious house *for the sake of, e.g., The Blessed Virgin*, they become the property of the church or house and their alienation is subject to the ordinary norms.

1296 § 3 CR 5/60, 302-3: J. B. O'Connell: Material of Albs and Surplices. (Reply).

SRC decrees require the alb to be of linen or hemp, not any other material such as nylon, whatever its elegance and strength. Some rubricians allow cotton for a surplice, but Nabuco rules out nylon.

1305 § 1, 2° ST 2/60, 113-115: E. F. Regatillo: Sale of blessed objects. (Reply).

Blessed objects should not be put up for sale, and lose their consecration or blessing if they are, but not if privately sold. On the contrary, indulgences are lost by their actual sale (cn 924 § 2). All such objects should not be indulgenced until the contract of sale is completed, but not necessarily until the price is actually paid over.

1306 IER 4/60, 263: G. Montague: May Lay Sacristans touch Sacred Vessels? (Reply).

Considerable mitigation of pre-Code discipline by Codex. Where there is no danger of irreverence, scandal or contempt, sacred vessels may be handled by persons (men, women, religious, lay) to whom the rector has entrusted their charge.

Note—(1) cn 1306 speaks only of chalice and paten, so by implication other sacred vessels are not included.

(2) cn 1306 does not impose a grave precept, only a counsel ("curandum").

(3) the canon authorizes not only clerics but "those who have custody of them."

LIBER III, PARS. IV: DE MAGISTERIO ECCLESIASTICO

1336 HPR 2/60, 474-476: C. L. Parres: Advertising Sermons. (Reply).

Bouscaren-Ellis states that the Instruction of the S.C. Consist. on preaching (28/6/1917) still has force except in a few minor details where if differs from the Code. The Instruction issued practical norms rather than strict laws. Its condemnation of advertising sermons and lauding preachers is to be taken as referring to commercial publication in newspapers or handbills rather than to a simple announcement or commendation in the press.

1371 § 2, CpR I-II/60, 51-52: G. Luis: Annotations on Letter of Card. Valeri, 26/1/59.

The letter states the practical interpretation given to these cns in relation to lay religious teaching religion in their schools. L. states the following principles: The Ordinary has a right of vigilance over the teaching of religion in all schools. He has the right to examine all teachers except those who have a diploma or degree in those religious subjects from higher ecclesiastical Institutes. He cannot deny the right to teach to a whole religious teaching community as such nor to all the individuals in such a community.

1376 ME I/60, 125-140: R. Bidagor, S. J.: Notae Quaedam de Iure Universitatum in Codice Iuris Canonici.

Bidagor deals with the origin of universities and their present day status in canon law. He comments on the competence of the SC of Seminaries and Studies.

1385 § 2 AdC 11/60: A. Bride: Evêques titulaires et censure des livres. (Reply).

Per se a titular Bishop is not "Ordinarius loci" (cf. cn 198), and therefore has no jurisdiction to give himself an Imprimatur (cf. cn 1385 § 2). Nor are coadjutor or auxiliary Bishops "Ordinarii loci" as such, though often the Ordinary appoints such a Bishop as his Vicar General, or the Holy See makes one an Apostolic Administrator. If this has happened, then a titular Bishop will have the power to act as his own censor, in so far as he has the added status of an "Ordinarius loci," but not in his mere capacity as a titular Bishop. Cardinals who are not Bishops, or who have not the status of an Ordinarius loci, must also submit their works to censorship in accordance with cn 1385 § 2.

LIBER III, PARS. V: DE BENEFICIIS

1420 § 3 L II/60, 245: Fr. Renatus, OFM., Cap.: De peculiari figura juridica vicarii paroecialis. (Article).

Cf. cn **471** above.

LIBER III, PARS. VI: DE BONIS ECCLESIAE TEMPORALIBUS

1505 AdC 8/60, 124-125: A. Bride: Contribution imposée. (Reply).

The local Ordinary may impose, for some urgent and special diocesan need a moderate tax on each beneficiary (not on each *priest*). It would be an abuse to impose a *permanent* tax in virtue of this cn.

1505-6 AdC 8/60, 124-5: A. Bride: Prélèvement sur les honoraires de messes ou contribution imposée. (Reply).

In a few French dioceses the Bishops impose a tax (50 francs) on Mass stipends, or a yearly tax (5,000 francs) on holders of benefices, to finance new church building. The former tax is only justified if the Ordinary has obtained a special indult, as it is a derogation from cn 1506; the latter tax is justified "speciali dioecesis necessitate impellente," without recourse to Rome (cn 1505, the so-called "subsidium caritativum").

1513 CM 2/60, 58-62: J. Génicot: Bequests to Pious Causes. (Casus).

Peter, deceased, leaves a will containing various pious bequests all of which are declared void because of the absence of special formalities prescribed by civil law. Paul, the heir, asks if in conscience he is bound to fulfil these bequests. John succeeds by intestacy to his father's property. He finds an unsigned will written by his father containing a pious bequest. Is he obliged to carry out that bequest?

G. remarks that the civil law has the right to invalidate either a whole will or certain kinds of bequests provided it

does not act against natural law and remains within the limits of its competence. But pious causes come under the competence of the Church and not the State.

Cn 1513, as interpreted by PCIC 17/2/1930 imposes an obligation in conscience on the heirs to carry out the dispositions of the testator in favour of pious causes. Where necessary a compositio can easily be obtained from SPA.

G. notes that a Government hospital is not a pious cause. Such hospitals are founded on purely humanitarian and philanthropic motives. Consequently there is no obligation to fulfil a bequest to a Government hospital.

Re John's obligations: In order that a last will be valid in canon law it is required and sufficient that the determination of the deceased to make a bequest to a pious cause be clear and certain. This certitude can be acquired either from a written document of the deceased or from the fact that he has by word of mouth clearly manifested his will to the heir or to trustworthy witnesses. The heir is not bound to believe the testimony of only one witness, even if this witness is a most trustworthy person. (Cn 1791).

A testimony, although it is a juridical act, is not a contract. Hence the dispositions of cn 1529 do not affect bequests made by testament. Thus John cannot say the will is invalid in civil law and therefore also invalid in canon law.

But a will that is not yet signed shows that the deceased had not yet firmly decided to make that bequest and it seems to be incomplete—yet it would be more secure to have recourse to SPA.

1514 CR 3/60, 178-9: L. L. McReavy: Disposal of Poor-Box Offerings. (Reply).

A priest, in whose parish there are no real poor, acts justly in devoting the contents of the Poor-Box to pious causes such as can reasonably be included under the generic term of "The Poor."

1529 AdC 11/60, 169-170: E. Garrigou: Loi civile et Contrats. (Reply).

Q. Are civil laws which determine the validity of contracts, always binding in conscience? R. It depends on the type of contract. The various kinds analysed and explained.

1530 RfR I/60, 51: J. F. Gallen: Sale of property forced by a government. (Reply).

Cf cn **532** § **2** above.

1532 VR II/60, 106: A. Peinador: Aplicación de Donativos. (Reply).

Cf. cn **1281** § **1** above.

1547 ACR I/60, 42-48: G. C. Gallen: Establishment of Pious Foundations. (Reply).

When the faithful make offerings to the Church or religious institute, specifying the purpose for which the money is given, the donor should stipulate that it is to be invested, and the income used for the purpose, before the moral person concerned is bound by cn 1547. A bequest is not presumed to be a pia fundatio. It should clearly be established to have been intended as such, before its acceptance as a pious foundation with consequent obligations. G. discusses essential elements of pious foundations.

LIBER IV: DE PROCESSIBUS

1574 D.C. 1319, 3 Jan. 1960: Allocution of Pope John XXIII to Catholic Lay Lawyers of Italy 8 Dec. 1959 on The role of the Catholic Lawyer.

"He should be above all a highly qualified person; in character firm and precise with a deep personal moral and intellectual training matured in the course of years enriched by an abundance of youthful freshness; a freshness which should not cease constantly to renew itself with the effort of keeping up to date.

The lawyer should be a strict interpreter of law; the guardian and defender of legal principles, as an untiring artisan developing a scheme of law based on the two tables of Divine Law in which the natural law, engraved in every human soul by the creative hand of God, finds true expression and confirmation.

The lawyer also applies the principles of law to the particular cases which the unlimited variety in human life affords and at the same time he will estimate the sanctions, after the manner of God Who is the 'Judge just, strong and wise.' "

1585 ST 2/60, 108-110: E. F. Regatillo: Nullity of a sentence of separation. (Reply).

A complicated case of nullity, hinging chiefly on the fact that the notary was not present at several of the hearings, but merely signed the judge's acta. If all the acts are null, the sentence is certainly null (1869 § 2). If some are null, others valid, the sentence will be valid if based on those which are valid, not otherwise.

1601 RDC II/60, 97: J. F. Noubel: Les Recours Administratifs dans le Code de Droit Canonique. (Article).

Definition: recourse is a remedium iuris alleging to hierarchical authority that an administrative decree gives just cause for complaint, either because it is unlawful or because of its juridical consequences. Recursus is in via administrativa what appellatio is in via judiciaria. It can be granted either as of right or as a favour: it can be in suspensivo or in devolutivo tantum. It is left to the aggrieved person to initiate the recourse: he must have legal standing, have a true grievance against a true administrative decision. The purpose of recourse is to have the decision reconsidered: it must be made within the time limit permitted: recourse is not permitted against a law either general or particular. N. gives examples: in cases of conflict between two administrators, to procure facilities illegally refused (against a negligent minister of Confirmation, against defects in convoking a quorum for an election, against provision to a benefice of a less worthy candidate, against decisions made by authorities inferior to the Ordinary, in settling disputes between the faithful, etc.), and outlines the procedure (from cn 1447).

1652 VR III/60, 191-195: M. C. de Anta: Los Religiosos y el Derecho de Demanda Judicial. (Article).

Explanation of the capacity of religious, both as individuals and as representatives of the community, to stand in court.

1754 RDC I/60, 27-47: J. Bernhard: La valeur probatoire du témoignage dans la procédure canonique. (Article).

B. uses recent Rota decisions to consider the probative value of testimony given by witnesses. The credibility of witnesses, testimony *de scientia propria, de auditu alieno, de opinione, de fama.* The problem of leading questions and the value to be given to their answers. The evaluation of testimony when there is but one witness, when two or more witnesses agree and

when there is a conflict of testimony. It is the duty of the judge to weigh evidence not by mathematical rules but by an intelligent appreciation of all the elements.

1869 RDC II/60, 141: J. Delanglade, SJ: Le Juge, Serviteur de la Loi ou Gardien de la Justice selon la Tradition Théologique. (Article).

D. examines the history of three opinions on the question "Utrum judex debet judicare secundum allegata et probata." (1) The judge must always judge secundum allegata et probata (St. Thomas). (2) He may never condemn a person secundum allegata et probata if he knows from other sources that he is innocent. (3) He may judge secundum allegata et probata in causis contentiosis, non autem in criminalibus, if he knows the reus to be innocent. D. examines the Roman Law commentators (no Glossators) and canonists (only printed works), the moral and dogmatic theologians until the present day, and concludes that modern teaching has shifted more responsibility and power on to the judge.

1891 § 1 IDE II/60, part 2, 69-72: Rotal Sentence, 3/6/1960: Coram Felici: New Grounds for nullity.

A man, whose plea for the declaration of nullity on the ground of his wife's impotence was refused, appealed to the court of second instance and at the same time asked that the case be tried as in the first instance on the ground of his own impotence. Article 219 § 2 of *Provida Mater* (SCS 15/8/1936) is not a derogation of cn 1891 § 1, nor is it an extention of relative competence granted exclusively to those tribunals, which judging a case in the second instance are at the same time tribunals of the first instance, but it grants to marriage cases the general concession of a special commission in favour of any tribunal of appeal to judge "tanquam in prima instantia" concerning new grounds for nullity, if these are admitted without contest. No time limit is placed to the valid admission of a new ground of nullity, nor is any particular solemnity required. The opposition of one member is effective only if it refers to the "cumulatio" of the new ground for nullity with the already existing causa petendi.

1892 1894 AdC 20/60, 311-2: A. Bride: Sentence nulle et plainte en nullité. (Reply).

Does the omission of the publication of the process (cn 1858) make the sentence null? And could the injured party enter a

"quaerela nullitatis" against the sentence? Yes, for cns 1892 and 1894 do not enumerate "taxative" all the causes of nullity of a sentence; the omission to publish the process denies the defendant the natural right to defend himself. Cn 1861 § 2 provides an analogy. The judges in the case might find themselves responsible for damages, etc. (cns 1625, 1681).

1909 § 2 ST 1/60, 46-48: E. F. Regatillo: Denial of appeal in a case of separation. (Reply).

The appellant failed to deposit the proper pecuniary cautio before the time limit laid down, and so the judge of first instance put his decree of separation into execution, considering that there had been a tacit desertion of the appeal. This is in accordance with approved authors.

1960ff J I/60, 84-102: J. G. Chatham: Sources and their use in the preparation of briefs and sentences. (Article).

C. gives the sources for the preparation of briefs and sentences in marriage cases, suggests practical information on the use of these sources and ends with a comprehensive bibliography

1960 AC 1960, 83-97: R. Bidagor SJ: Quelques remarques sur les causes matrimoniales. (Article).

A series of loosely connected comments on various aspects of work in matrimonial tribunals. For example the judge must give a sentence based on human means and human reasoning for the good of souls: even if he is in error his affirmative sentence is recognised by God. B. discusses some of the causes of nullity, defect of form, impediments, defective consent, etc. The value of the confessio partium. Comments on testimony of experts, particularly on the verum semen in impotence cases. On the reasons for non-consummation: "Esti hymen parvam quandam dilacerationem praesentet quae tribuenda copulae conatui sit, adhuc inconsummatio matrimonii evinci potest. . ."

1986 ST 3/60, 163-168: E. F. Regatillo: Proceso de nulidad de matrimonio por defecto de forma. (Article).

This is a case of nullity of marriage, in which the court of first instance gave an affirmative decree. The Def. vinc. appealed, and the ponens of the appeal court rejected the appeal of his own accord. R. replies that if the D.V. was quite convinced of the nullity and had no solid reasons to put

forward against it, the tribunal of first instance could put the sentence into execution. The reason is that the defect of form was so manifest as to exclude any real doubt.

1990 **IER 5/60, 327: T. Cunningham: Has a non-Catholic the right to petition for nullity in the "exceptional" marriage cases?** (Reply).

Without recourse to the Holy Office, a non-Catholic may not accuse or be an actor in a nullity suit or effectively denounce his marriage whether the process be the formal one or the exceptional one of cn 1990. However, these disabilities will not normally arise when the exceptional process can be used. For by most definitions of the much-discussed phrase "impediments of their nature public," those listed in cn 1990 will qualify so that the promotor justitiae will be competent to petition the nullity in his own right.

LIBER VI: DE DELICTIS ET POENIS

2229 **IER 4/60, 258: T. Cunningham: Minors and ipso facto censures.** (Reply).

Minors are not normally excused by reason of their age, unless they be under the age of puberty, from ipso facto censures; they are however excused, unless the contrary is proved, from those ipso facto censures attached to laws containing the words "scienter," "ausus fuerit" or similar words.

2247 § 2 **HPR 5/60, 759-762: C. L. Parres: Personal Penal Law and Reservation.** (Reply).

If an Ordinary attaches a *latae sententiae* censure to a law which is both territorial and personal, the censure is incurred wherever his subjects violate this law. Still if the Ordinary were to reserve such a censure, the reservation would be effective only within his own territory. He can limit the absolving power of priests subject to his jurisdiction and not that of other priests.

2247 §3ff HPR 3/60, 569-574: C. L. Parres: In Doubt about Absolution from a Censure of Particular Law. (Reply).

A Catholic couple by contracting a civil marriage in a certain diocese incur an excommunication reserved to the Ordinary. If they are absolved by a priest in another diocese, where such a censure is not reserved, the ordinary form of absolution from censure in confession takes away the excommunication, even if the priest is ignorant of the reservation. If the censure is absolved in this way it should not be urged in the external forum.

2259 § 2 AdC 13/60, 204: J. Pintard: Protestant servant de messe. (Reply).

A priest invites a Protestant pastor, a friend of his, to serve his Mass. The pastor does so very willingly.

Pintard notes that this is not allowed if one observes the canonical rulings strictly: the pastor is excommunicated, cn 2314, and as such cannot take an active participation in the "officia divina" (cn 2259 § 2). One must also remember the danger of scandal. On the other hand a parish priest must remember his duty to the non-Catholics of his parish (1350 § 1), and the purpose of ecclesiastical penalties (cn 2215: privatio alicuius boni ad delinquentis correctionem. . .) He concludes that if there is no other server, the parish priest need not keep to the strict letter of the law, and may invite his friend to serve. The graces of the Mass, and the exclusion from Communion, may well help to bring the pastor to the true Faith.

2278ff ST 6/60, 369-70: E. F. Regatillo: Suspension. (Reply).

The penalty of suspension in general forbids exercise of jurisdiction or order within the diocese of the person who inflicts it, that of common law everywhere. Suspension ab officio or a beneficio does not affect these in other dioceses, but suspension a divinis, ab ordinibus, a missae celebratione, a potestate ordinis, is effective outside the diocese of the authority who inflicts it. A parish priest suspended a jurisdictione can assist at marriage since this is exercise of a notarial rather than a jurisdictional power.

2313 IER 6/60, 403: T. Cunningham: Decree on Pilgrimages. (Reply).

Short summary of contents of Decree of SCC, 11/2/1936, which issued regulations for the preparation and direction of pilgrimages. Five norms were imposed:—

(1) Truly religious character of pilgrimage must be preserved.

(2) Promotion and control is exclusive right of lawful ecclesiastical authority.

(3) Arranged and conducted by chosen men. Spiritual Director required.

(4) Reasonable charges, and avoidance of all appearance of profit-making.

(5) Technical arrangements entrusted to honest, expert laymen, not clerics.

2385 GR I-II/60, 69-72: S. Goyeneche: Dismissal from Religion. (Reply).

Cf. cn **646** § **1**, **2°** above.

2414 ITQ III/60, 201-220: E. M'Caffrey: Confessors of nuns and sisters. (Article).

This cn, in virtue of cn 2219, does not apply to societates in communi viventium sine votis.

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